

## IN SENATE OF THE UNITED STATES,

APRIL 30, 1822.

*Ordered*, That the injunction of secrecy be removed from the following proceedings and documents, and that they be printed.

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MONDAY, JANUARY 21, 1822.

The following written message was received from the President of the United States, by Mr. Gouverneur, his Secretary:

*To the Senate of the United States:*

I nominate the persons whose names are stated in the enclosed letter from the Secretary of War, for the appointments therein respectively proposed for them.

The changes in the army, growing out of the act of the 2d of March, 1821, "To reduce and fix the military peace establishment of the United States," are exhibited in the official register for the year 1822, herewith submitted for the information of the Senate.

Under the late organization of the artillery arm, with the exception of the colonel of the regiment of light artillery, there were no grades higher than lieutenant colonel recognized. Three of the four colonels of artillery, provided for by the act of Congress of the 2d of March, 1821, were considered, therefore, as original vacancies, to be filled as the good of the service might dictate, from the army corps.

The pay department being considered as a part of the military establishment, and within the meaning of the above recited act constituting one of the corps of the army, the then paymaster general was appointed colonel of one of the regiments. A contrary construction, which would have limited the corps specified in the 12th section of the act to the line of the army, would equally have excluded all the other branches of the staff, as well as that of the pay department, which was expressly comprehended among those to be reduced. Such a construction did not seem to be authorized by the act, since, by its general terms, it was inferred to have been intended to give a power of sufficient extent to make the reduction, by which so many were to be disbanded, operate with as little inconvenience as possible to the parties. Acting on these views, and on the recommendation of the board of general officers, who were called in, on account of their knowledge and experience, to aid the Executive in so delicate a service, I thought it proper to appoint Colonel Towson to one of the new regiments of artillery, it being a corps in which he had eminently distinguished himself, and acquired great knowledge and experience in the late war.

In reconciling conflicting claims, provision for four officers of distinction could only be made, in grades inferior to those which they formerly held. Their names are submitted, with the nomination for the brevet rank of the grades from which they were severally reduced.

It is proper, also, to observe, that, as it was found difficult, in executing the act, to retain each officer in the corps to which he belonged, the power of transferring officers from one corps to another was reserved in the general orders published in the register, till the first day of January last, in order that, upon vacancies occurring, those who had been put out of their proper corps might, as far as possible, be restored to it. Under this reservation, and in conformity to the power vested in the Executive by the 1st section of the 75th article of the general regulations of the army, approved by Congress at the last session, on the resignation of Lieut. Col. Mitchell, of the corps of artillery, Lieutenant Colonel Lindsay, who had belonged to this corps before the late reduction, was transferred back to it, in the same grade. As an additional motive to the transfer, it had the effect of preventing Lieutenant Colonel Taylor and Major Woolley being reduced to lower grades than those which they held before the reduction, and Capt. Cobb from being disbanded under the act. These circumstances were considered as constituting an extraordinary case, within the meaning of the section already referred to, of the regulations of the army. It is, however, submitted to the Senate whether this is a case requiring their confirmation, and, in case such should be their opinion, it is submitted to them for their constitutional confirmation.

JAMES MONROE.

*Washington, January 17th, 1822.*

WAR DEPARTMENT,

*January 2, 1822.*

SIR: I have the honor to lay before you a list of promotions and appointments, requiring the confirmation of the Senate.

I have the honor to be, sir, with perfect respect,

Your obedient servant,

J. C. CALHOUN.

To the PRESIDENT of the United States.

*Promotions and Appointments in the Army of the United States.*

James Gadsden, late insp. general, to be adjt. gen.	13 Aug. 1821
Samuel B. Archer, capt. art. to be insp. gen.	10 Nov. 1821
Wm. Linnard, late dep. qr. master gen. to be qr. master,	12 Nov. 1813
Henry Stanton, late dep. qr. master gen. to be qr. master,	13 May, 1820
Daniel Parker, late adj. and insp. gen. to be pay-master gen.	1 June, 1821



Thomas Wright, late paymaster 8th infantry, to be paymaster, - - - - -	22 June, 1815
Asher Phillips, late paymaster 3d infantry, to be paymaster, - - - - -	26 Aug. 1815
Alphonso Wetmore, late paymaster 6th infantry, to be paymaster, - - - - -	14 Oct. 1815

*Corps of Engineers.*

Cadet Edwd. H. Courtenay, to be brev. 2d lieutenant.	1 July, 1821
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*First Regiment of Artillery.*

2d lieutenant. Matthew A. Patrick, to be 1st lieutenant.	11 Aug. 1820
3d lieutenant. Daniel D. Tompkins, of ord. to be 2d lieutenant.	1 July, 1820
Brev. 2d lieutenant. Jonathan Prescott, to be 2d lieutenant.	1 July, 1821
Brev. 2d lieutenant. Charles Dimmock, to be 2d lieutenant.	1 July, 1821
Cadet Washington Wheelright, to be brev. 2d lieutenant.	1 July, 1821

*Second Regiment Artillery.*

Nathan Towson, late capt. light art. to be colonel,	1 June, 1821
1st lieutenant. Thomas C. Legate, to be captain,	13 May, 1820
2d lieutenant. C. M. Eakin, to be 1st lieutenant,	13 May, 1820
2d lieutenant. Samuel Cooper, to be 1st lieutenant,	1 July, 1821
3d lieutenant. William C. De Hart, late ordnance, to be 2d lieutenant, - - - - -	1 July, 1820
3d lieutenant. Wm. P. Buchanan, late ordnance, to be 2d lieutenant, - - - - -	1 July, 1820
Cadet David Wallace, to be brev. 2d lieutenant,	1 July, 1821
Cadet James Grier, to be brev. 2d lieutenant,	1 July, 1821

*Third Regiment of Artillery.*

2d lieutenant. S. S. Smith, to be 1st lieutenant,	30 Nov. 1820
3d lieutenant. Francis N. Barbarin, ord. to be 2d lieutenant.	1 July, 1820
3d lieutenant. Charles Thomas, ord. 2d lieutenant.	1 June, 1821
Cadet Robert W. Allston, bt. 2d lieutenant.	1 July, 1821
Cadet J. F. Scott, bt. 2d lieutenant.	1 July, 1821

*Fourth Regiment of Artillery.*

J. R. Fenwick, late lieutenant. col. light art. to be colonel,	1 June, 1821
2d lieutenant. John M. Washington 1st lieutenant.	23 May, 1820
2d lieutenant. William Wright 1st lieutenant.	23 Aug. 1820
2d lieutenant. Harvey Brown, 1st lieutenant.	23 Aug. 1821
3d lieutenant. Wm. H. Bell, ord. 2d lieutenant.	1 July, 1820
Cadet Clark Burdine 2d lieutenant.	1 July, 1821
Cadet W. W. Wells 2d lieutenant.	1 July, 1821
Cadet J. C. Holland 2d lieutenant.	1 July, 1821

Cadet Edward C Ross	to be 2d lieutenant.	1 July, 1821
Cadet John B Scott	bt. 2d lt.	1 July, 1821

*First Regiment of Infantry.*

Cadet Jefferson Vail	to be 2d lieutenant.	1 July, 1821
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*Second Regiment of Infantry.*

2d lieutenant. E. K. Barnum	to be 1st lieutenant.	31 Dec. 1820
Cadet Alex. Morton	2d lieutenant.	1 July, 1821

*Third Regiment of Infantry.*

Cadet Otis Wheeler	to be 2d lieutenant.	1 July, 1821
Cadet Henry Bainbridge	2d lieutenant.	1 July, 1821

*Fourth Regiment of Infantry.*

1st lieutenant. Francis W. Brady	to be captain,	31 Dec. 1820
2d lieutenant. Thomas Johnson	1st lieutenant.	31 Dec. 1820

*Fifth Regiment of Infantry.*

1st lieutenant. J. Plympton	to be captain,	1 Jan. 1822
2d lieutenant. C. Burbridge	1st lieutenant.	1 Nov. 1821
2d lieutenant. J. B. F. Russell	1st lieutenant.	1 Jan. 1822
Cadet Seth M. Capron	2d lieutenant.	1 July, 1821
Cadet Julius A. d'Laguel	2d lieutenant.	1 July, 1821

*Sixth Regiment of Infantry.*

2d lieutenant. W. D. M'Cray	to be 1st lieutenant.	5 Nov. 1821
3d lieutenant. Joseph Buckley, ord.	2d lieutenant.	1 June, 1821
Cadet Joseph Pentland	2d lieutenant.	1 July, 1821
Cadet W. W. Gaillard	2d lieutenant.	1 July, 1821
Cadet Jason Rogers	2d lieutenant.	1 July, 1821
Cadet D. M. Porter	2d lieutenant.	1 July, 1821

*Seventh Regiment of Infantry.*

Major J. B. Many, to be lieutenant colonel	1 Jan.	1822.
2d lieutenant John B. Hobkirk, to be 1st lieutenant,	31 Oct.	1820.
3d lieutenant James Dawson, (ord.) to be 2d lieutenant.	1 June,	1821.

Edward Purcell, late surgeon 5th inf. to be surgeon,	18 June,	1821.
John A Brereton, D. C. to be assistant surgeon,	1 July,	1821.
Henry Stevenson, late post surgeon, do. do.	16 July,	1821.
Mordecai Hale, do. do. do.	27 Oct.	1821.
Richard S. Satterlee,		

Walter Jones, D. C. to be brigadier general of the militia of the District of Columbia,	-	1 Aug.	1821.
Israel P. Thompson, D. C. to be captain 1st reg. 2d brig. militia of the District of Columbia,	-	1 Aug.	1821.
George Brent, D. C. to be lieutenant 1st reg. 2d brig. militia of the District of Columbia,	-	1 Aug.	1821.
Samuel M'Chain, to be ensign 1st reg. 2d brigade, militia of the District of Columbia,	- -	1 Aug.	1821.

The following officers have been raised in the United States army.

*Corps of Engineers.*

Brevet Major General Alexander Macomb, late brigadier general, to be colonel, 6th of July, 1812, with the brevet rank of brigadier general, 24th January, 1814.

*Sixth Regiment of Infantry.*

Brigadier General Henry Atkinson, to be colonel, 15th April, 1814, with the brevet rank of brigadier general, 13th May, 1820.

*Seventh Regiment of Infantry.*

Major William Bradford, late of the rifle, to be captain, 6th July, 1812, with the brevet rank of major, 10th November, 1818.

*First Regiment of Artillery.*

Major James Dalliba, late of the ordnance, to be captain, 5th August, 1813, with the brevet rank of major, 9th February, 1815.

The message was read.

On motion,

*Ordered*, That it be referred to the Committee on Military Affairs, to consider and report thereon.

WEDNESDAY, JANUARY 23, 1822.

On motion, by Mr. Williams, of Tennessee,

*Ordered*, That the message nominating persons to promotions and appointments in the army, be printed for the use of the Senate, under an injunction of secrecy.

MONDAY, FEBRUARY 25, 1822.

Mr. Williams, of Tennessee, from the Committee on Military Affairs, to whom was referred the message of the 21st January,

nominating persons to promotions and appointments in the army, reported on the nomination of Richard S. Satterlee; and

*Resolved*, That the Senate do advise and consent to the appointment agreeably to the nomination.

FRIDAY, MARCH 8, 1822.

On motion, by Mr. Benton,

*Resolved*, That the Committee on Military Affairs be instructed to make a report to the Senate, shewing the number of the Colonels in the army of the United States, on the 2d of March, 1821, their names, dates of commission, and corps. Also, shewing the number of Colonels in service under the peace establishment of 1821, their names, the highest grade before held by them, the date of that commission, and the corps to which they belonged, if attached to any corps. Also shewing the number of Adjutant and Inspector Generals in service on the said 2d of March, their names, the highest lineal rank previously held by each in the United States' army, and the date of that commission. Also, showing the number of Adjutant and Inspector Generals in service under the peace establishment of 1821, their names, the highest lineal rank previously held by them, and the date of commission. Also, a list of all transfers and promotions made under or since the said act of March 2d, showing the names, grades, dates of commissions, and corps to which each belonged at the time of the transfer or promotion, and the office to which transferred or promoted. Also, showing the highest lineal rank held by Colonel R. Butler, in the army of the United States, at any time before the said 2d of March, the time when, and his rank when he may have quit the line of the army; and the grade and date of commission of Major Wm. Bradford, at the date aforesaid.

WEDNESDAY, MARCH 13, 1822.

Mr. Williams, of Tennessee, from the Committee on Military Affairs, to whom was referred the message of the 21st January, nominating to promotions and appointments in the army, made the following report; which was read:

That Colonel Towson, on the 2d day of March, 1821, was Paymaster General; that he held neither rank nor command in the army, and, not belonging to any corps of the army, the President had no power, under the law reducing and fixing the military peace establishment, to arrange him to the command of one of the regiments retained in service by said act.

The committee further report, that Colonel Gadsden, on the 2d of March, 1821, was one of the two Inspector Generals of the army, both of whom were retained in service by the act reducing the army; that there were two Adjutant Generals in service, one of whom was retained in service; and the President was not authorized to dismiss both of them, and retain Colonel Gadsden as Adjutant General.



The committee further report, that Colonel Fenwick, on the 2d March, 1821, was Lieutenant Colonel of the light artillery; that, by appointing him to the command of one of the regiments of artillery it will disband, as supernumerary, a full Colonel, who, by the terms of the law of the 2d March, 1821, was entitled to be retained. The committee, therefore, recommend that the Senate do not advise and consent to the nomination of Colonel Fenwick.

The committee further report, that Generals Macomb and Atkinson, Majors Bradford and Dalliba are nominated to grades below the rank they formerly held in the army; that the principle of *raze* was recognized by the Senate on the reduction of the army in 1815; and, under the authority of that precedent, the committee recommend that the four last mentioned nominations be confirmed.

Mr. Williams, from the same committee, pursuant to a resolution of the 8th instant, reported the army register of May 17, 1821; which was read.

#### THURSDAY, MARCH 14, 1822.

The Senate proceeded to consider the nomination of Nathan Towson to appointment in the army, as contained in the message of the 21st January; and, after debate,

The Senate adjourned.

#### FRIDAY, MARCH 15, 1822.

The Senate resumed the consideration of the nomination of Nathan Towson; and,

On motion,

*Ordered*, That it lie on the table.

#### SATURDAY, MARCH 16, 1822.

The Senate resumed the consideration of the nomination of Nathan Towson; and,

On the question, "Will the Senate advise and consent to this appointment?"

It was determined in the negative, { Yeas . . . . . 19,  
Nays . . . . . 25.

On motion, by Mr. Lanman,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Mr. Barbour,

Brown, of *Lou.*

Brown, of *Ohio*,

Eaton,

Edwards,

Findlay,

Holmes, of *Miss.*

Mr. Johnson, of *Ken.*

Johnson, of *Lou.*

King, of *Alab.*

King, of *N. York*,

Knight,

Lanman,

Mr. Mills,

Otis,

Parrott,

Southard,

Stokes,

Talbot.

Those who voted in the negative, are,

Mr. Barton,	Mr. Lloyd,	Mr. Smith,
Benton,	Lowrie,	Taylor,
Boardman,	Macon,	Thomas,
Chandler,	Morril,	Van Dyke,
D'Wolf,	Palmer,	Walker,
Dickerson,	Pleasants,	Ware,
Elliott,	Ruggles,	Williams, of Miss.
Gaillard,	Seymour,	Williams, of Ten.
Holmes, of Maine,		

So it was

*Resolved*, That the Senate do not advise and consent to the appointment of Nathan Towson, to be Colonel of the second regiment of artillery.

#### MONDAY, MARCH 18, 1822.

The Senate proceeded to consider the nomination of James Gadsden to be Adjutant General, contained in the message of the 21st January; and, after debate,

The Senate adjourned.

#### THURSDAY, MARCH 21, 1822.

The Senate resumed the consideration of the nomination of James Gadsden to be Adjutant General, contained in the message of the 21st January; and,

On the question, "Will the Senate advise and consent to this appointment?"

It was determined in the negative,      { Yeas . . . . . 20,  
   { Nays . . . . . 23.

On motion, by Mr. Eaton,

The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are,

Mr. Barbour,	Mr. Holmes, of Miss.	Mr. Mills,
Brown, of Lou.	Johnson, of Ken.	Otis,
Brown, of Ohio,	Johnson, of Lou.	Parrott,
Eaton,	King, of Alab.	Southard,
Edwards,	King, of N. Y.	Stokes,
Elliott,	Knight,	Williams, of Miss.
Findlay,	Lanman,	

Those who voted in the negative, are,

Mr. Barton,	Mr. Macon,	Mr. Taylor,
Benton,	Morril,	Thomas,
Boardman,	Noble,	Van Buren,
Chandler,	Palmer,	Van Dyke,
D'Wolf,	Pleasants,	Walker,
Dickerson,	Seymour,	Ware,
Gaillard,	Smith,	Williams, of Ten.
Holmes, of Maine,	Talbot,	

So it was

*Resolved*, That the Senate do *not* advise and consent to the appointment of James Gadsden to be Adjutant General.

The Senate proceeded to consider the nomination of Alexander Macomb, to be Colonel of the corps of engineers, contained in the last mentioned message; and,

On motion, by Mr. Smith,

*Ordered*, That the question, " Will the Senate advise and consent to this appointment?" be taken by yeas and nays.

On motion,

*Ordered*, That the nomination lie on the table.

### FRIDAY, MARCH 22, 1822.

The Senate resumed the consideration of the nominations to promotions and appointments in the army, as contained in the message of the 21st January, and not before acted on.

On the question, " Will the Senate advise and consent to the appointment of Alexander Macomb to be Colonel of engineers, with the brevet rank of Brigadier General?"

A division of the question was called for, and the vote was taken on the first member thereof,

Which was determined in the affirmative, { Yeas . . . . 26,  
Nays . . . . 14.

The yeas and nays being previously ordered,

Those who voted in the affirmative, are,

Mr. Barbour,	Mr. Johnson, <i>of Ken.</i>	Mr. Pleasants,
Boardman,	King, <i>of Alab.</i>	Southard,
Brown, <i>of Lou.</i>	King, <i>of N. Y.</i>	Stokes,
Brown, <i>of Ohio,</i>	Knight,	Talbot,
Dickerson,	Lanman,	Van Buren
Eaton,	Macon,	Van Dyke,
Elliott,	Mills,	Walker,
Findlay,	Morril,	Williams, <i>of Ten.</i>
Holmes, <i>of Miss.</i>	Parrott,	

Those who voted in the negative, are,

Mr. Barton,	Mr. Holmes, <i>of Maine</i>	Mr. Smith,
Benton,	Noble,	Taylor,
Chandler,	Palmer,	Thomas,
D'Wolf,	Ruggles,	Ware.
Gaillard,	Seymour,	

The vote was then taken on the second member of the said question,

And determined in the affirmative, { Yeas . . . . . 28,  
Nays . . . . . 15.

On motion by Mr. Southard,

The yeas and nays being desired by one-fifth of the Senators present,





The yeas and nays being desired by one-fifth of the Senators present,

Those who voted in the affirmative, are

Mr. Barbour,	Mr. Holmes, of <i>Miss.</i>	Mr. Mills,
Brown, of <i>Lou.</i>	Johnson, of <i>Ken.</i>	Otis,
Brown, of <i>Ohio,</i>	Johnson, of <i>Lou.</i>	Parrott,
Eaton,	King, of <i>Alab.</i>	Smith,
Edwards,	King, of <i>N. Y.</i>	Southard,
Elliott,	Knight,	Stokes,
Findlay,	Lanman,	Williams, of <i>Miss.</i>

Those who voted in the negative, are,

Mr. Barton,	Mr. Macon,	Mr. Taylor,
Benton,	Morril,	Thomas,
Boardman,	Noble,	Van Buren,
Chadler,	Palmer,	Van Dyke,
D'Wolf,	Pleasants,	Walker,
Dickerson,	Ruggles,	Ware,
Gaillard,	Seymour,	Williams, of <i>Ten.</i>
Holmes, of <i>Maine,</i>	Talbot,	

So it was

*Resolved*, That the Senate do *not* advise and consent to the appointment of James Gadsden, to be Adjutant General.

On motion, by Mr. Benton,

*Resolved*, That the Committee on Military Affairs inquire into the facts, and inform the Senate, whether Colonel Robert Butler has resigned, or refused to accept the place of Colonel or Lieutenant Colonel in the military peace establishment of the United States, and whether his resignation has been accepted.

TUESDAY, MARCH 26, 1822.

The following written message was received from the President of the United States, by Mr. Gouverneur, his Secretary:

*To the Senate of the United States:*

Having executed the act, entitled "An act to reduce and fix the military peace establishment of the United States," on great consideration, and according to my best judgment; and, inferring from the rejection of the nomination of Colonel Towson and Colonel Gadsden, officers of very distinguished merit, that the view which I took of that law has not been well understood, I hereby withdraw all the nominations on which the Senate has not decided, until I can make a more full communication and explanation of that view, and of the principles on which I have acted, in the discharge of that very delicate and important duty.

JAMES MONROE.

WASHINGTON, *March 26th*, 1822.

The message was read.

FRIDAY, APRIL 12.

The two following written messages were received from the President of the United States, by Mr. Gouverneur, his Secretary:

*To the Senate of the United States:*

Having cause to infer that the reasons which led to the construction which I gave to the act of the last session, entitled "An act to reduce and fix the peace establishment of the United States," have not been well understood, I consider it my duty to explain, more fully, the view which I took of that act, and of the principles on which I executed the very difficult and important duty enjoined on me by it.

To do justice to the subject, it is thought proper to shew the actual state of the army before the passage of the late act, the force in service, the several corps of which it was composed, and the grades, and number of officers commanding it. By seeing, distinctly, the body in all its parts, on which the law operated; viewing, also, with a just discrimination, the spirit, policy, and positive injunctions of that law, with reference to precedents, established in a former analogous case, we shall be enabled to ascertain, with great precision, whether these injunctions have, or have not, been strictly complied with.

By the act of the 3d of March, 1815, entitled "An act fixing the military peace establishment of the United States," the whole force in service was reduced to ten thousand men, infantry, artillery, and riflemen, exclusive of the corps of engineers, which was retained in its then state. The regiment of light artillery was retained as it had been organized by the act of 3d of March, 1814. The infantry was formed into nine regiments, one of which consisted of riflemen. The regiments of light artillery, infantry, riflemen, and corps of engineers, were commanded each by a colonel, lieutenant colonel, and the usual battalion and company officers; and the battalions of the corps of artillery, of which there were eight, four for the northern, and four for the southern division, were commanded by lieutenant colonels, or majors, there being four of each grade. There were, therefore, in the army, at the time the late law was passed, twelve colonels belonging to those branches of the military establishment. Two major generals, and four brigadiers, were likewise retained in service by this act; but the staff, in several of its branches, not being provided for, and being indispensable, and the omission inadvertent, proceeding from the circumstances under which the act was passed, being at the close of the session, at which time intelligence of the peace was received, it was provisionally retained by the President, and provided for, afterwards, by the act of the 24th of April, 1816. By this act, the ordnance department was preserved as it had been organized by the act of February 8, 1815, with one colonel, one lieutenant colonel, two majors, ten captains, and ten first, second, and third lieutenants. One adjutant and inspector general of the army, two adjutant gene-

rals, one for the northern, and one for the southern division, were retained. This act provides, also, for a paymaster general, with a suitable number of regimental and battalion paymasters, as a part of the general staff, constituting the military peace establishment; and the pay department, and every other branch of the staff, were subjected to the rules and articles of war.

By the act of March 2, 1821, it was ordained that the military peace establishment should consist of four regiments of artillery, and of seven of infantry, with such officers of engineers, ordnance, and staff, as were therein specified. It is provided, that each regiment of artillery should consist of one colonel, one lieutenant colonel, one major, and nine companies, with the usual company officers, one of which to be equipped as light artillery; and that there should be attached to each regiment of artillery one supernumerary captain to perform ordnance duty, thereby merging the regiment of artillery and ordnance department, into these four regiments. It was provided, also, that each regiment of infantry should consist of one colonel, one lieutenant colonel, one major, and ten companies, with the usual company officers. The corps of engineers, bombardiers excepted, with the topographical engineers and their assistants, were to be retained under the existing organization. The former establishment, as to the number of major generals and brigadiers, was curtailed one half, and the office of inspector and adjutant general to the army, and of adjutant general to each division, annulled, and that of adjutant general to the army instituted. The quartermaster, paymaster, and commissary departments, were, also, specially provided for, as was every other branch of the staff, all of which received a new modification, and were subjected to the rules and articles of war.

The immediate and direct operation of this act on the military peace establishment of 1815, was that of reduction, from which, no officer belonging to it was exempt, unless it might be the topographical engineers; for, in retaining the corps of engineers, as was manifest, as well by the clear import of the section relating to it, as by the provisions of every other clause of the act, reference was had to the organization, and not to the officers of the corps. The establishment of 1815 was reduced from 10,000 to about 6,000 men. The eight battalions of artillery, constituting what was called the corps of artillery, and the regiment of light artillery, as established by the act of 1815, were to be incorporated together, and formed into four new regiments. The regiments of infantry were to be reduced from nine to seven, the rifle regiment being broken. Three of the general officers were to be reduced, with very many of the officers belonging to the several corps of the army, and particularly of the infantry. All the provisions of the act declare, of what number of officers and men the several corps provided for by it should thenceforward consist; and not, that any corps, as then existing, or any officer of any corps, unless the topographical engineers were excepted, should be retained. Had it been intended to reduce the officers by corps, or to exempt the officers of any corps from the operation of the law; or, in the organi-



zation of the several new corps, to confine the selection of the officers to be placed in them to the several corps of the like kind, then existing, and not extend it to the whole military establishment, including the staff; or to confine the reduction to a proportional number of each corps, and of each grade in each corps, the object, in either instance, might have been easily accomplished by a declaration to that effect. No such declaration was made, nor can such intention be inferred. We see, on the contrary, that every corps of the army, and staff, was to be reorganized, and most of them reduced in officers and men; and that, in arranging the officers from the old to the new corps, full power was granted to the President to take them from any and every corps of the former establishment, and place them in the latter. In this latter grant of power, it is proper to observe, that the most comprehensive terms that could be adopted, were used, the authority being to cause the arrangement to be made from the officers of the several *corps*, then in the service of the United States, comprising, of course, every corps of the staff, as well as of artillery and infantry, and not from the *corps of troops*, as in the former act, and without any limitation as to grades.

It merits particular attention, that, although the object of this latter act was reduction, and such its effect, on an extensive scale, five new offices were created by it; four of the grade of colonel for the four regiments of artillery, and that of adjutant general for the army. Three of the first mentioned were altogether new, the corps having been newly created; and, although one officer of that grade, as applicable to the corps of light artillery, had existed, yet, as that regiment was reduced, and all its parts reorganized, in another form, and with other duties, being incorporated into the four new regiments, the commander was manifestly displaced, and incapable of taking the command of either of the new regiments, or any station in them, until he should be authorized to do so by a new appointment. The same remarks are applicable to the office of adjutant general to the army. It is an office of new creation, differing from that of adjutant and inspector general, and likewise from that of adjutant general to a division, which were severally annulled. It differs from the first in title, rank, and pay, and from the two latter, because they had been created by law, each for a division; whereas the new office, being instituted without such special designation, could have relation only to the whole army. It was manifest, therefore, that neither of those officers had any right to this new station, nor to any other station, unless he should be specially appointed to it, the principle of reduction being applicable to every officer in every corps. It is proper, also, to observe, that the duties of adjutant general, under the existing arrangement, correspond, in almost every circumstance, with those of the late adjutant and inspector general, and not with those of an adjutant general of a division.

To give effect to this law, the President was authorized, by the 12th section, to cause the officers, non-commissioned officers, artificers, musicians, and privates, of the several corps, then in the ser-

vice of the United States, to be arranged in such manner as to form, and complete out of the same, the force thereby provided for, and to cause the supernumerary officers, non-commissioned officers, artificers, musicians, and privates, to be discharged from the service.

In executing this very delicate and important trust, I acted with the utmost precaution. Sensible of what I owed to my country, I felt strongly the obligation of observing the utmost impartiality in selecting those officers who were to be retained. In executing this law I had no personal object to accomplish, or feeling to gratify; no one to retain, no one to remove. Having, on great consideration, fixed the principles on which the reduction should be made, I availed myself of the example of my predecessor, by appointing, through the proper department, a board of general officers to make the selection, and whose report I adopted.

In transferring the officers from the old to the new corps, the utmost care was taken to place them, in the latter, in the grades and corps to which they had respectively belonged in the former, so far as it might be practicable. This, though not enforced by the law, appearing to be just and proper, was never departed from, except in peculiar cases, and under imperious circumstances.

In filling the original vacancies in the artillery, and in the newly created office of adjutant general, I considered myself at liberty to place in them any officer belonging to any part of the whole military establishment, whether of the staff or line. In filling original vacancies, that is, offices newly created, it is my opinion, as a general principle, that Congress have no right, under the constitution, to impose any restraint, by law, on the power granted to the President, so as to prevent his making a free selection of proper persons for these offices from the whole body of his fellow-citizens. Without, however, entering here into that question, I have no hesitation in declaring it as my opinion, that the law fully authorized a selection from any branch of the whole military establishment of 1815. Justified, therefore, as I thought myself, in taking that range, by every the highest sanction, the sole object to which I had to direct my attention was the merit of the officers to be selected for those stations. Three generals, of great merit, were either to be dismissed, or otherwise provided for. The very gallant and patriotic defender of New Orleans had intimated his intention to retire, but, at my suggestion, expressed his willingness to accept the office of Commissioner to receive the cession of the Floridas, and of Governor, for a short time, of that territory. As to one, therefore, there was no difficulty. For the other two, provision could only be made in the mode which was adopted. General Macomb, who had signalized himself in the defence of Plattsburg, was placed at the head of the corps of engineers to which he had originally belonged, and in which he had acquired great experience, Colonel Armistead, then at the head of that corps, having voluntarily accepted one of the new regiments of artillery, for which he possessed very suitable qualifications. General Atkinson, likewise an officer of great merit, was appointed to the newly created

office of adjutant general. Brevet General Porter, an officer of great experience, in the artillery, and merit, was appointed to the command of another of those regiments. Colonel Fenwick, then the oldest lieutenant colonel of artillery, and who had suffered much in the late war by severe wounds, was appointed to a third; and Colonel Towson, who had served with great distinction in the same corps, and been twice brevetted for his gallantry, in the late war, was appointed to the last remaining one. Gen. Atkinson having declined the office of adjutant general, Colonel Gadsden, an officer of distinguished merit, and believed to possess qualifications suitably adapted to it, was appointed in his stead. In making the arrangement, the merits of Col. Butler and Col. Jones were not overlooked. The former was assigned to the place which he would have held in the line, if he had retained his original lineal commission; and the latter to his commission in the line, which he had continued to hold with his staff appointment.

That the reduction of the army, and the arrangement of the officers, from the old to the new establishment, and the appointments referred to, were, in every instance, strictly conformable to law, will, I think, be apparent. To the arrangement, generally, no objection has been heard; it has been made, however, to the appointments, to the original vacancies, and particularly to those of Colonel Towson and Colonel Gadsden. To those appointments, therefore, further attention is due. If they were improper, it must be either that they were illegal, or, that the officers did not merit the offices conferred on them. The acknowledged merit of the officers, and their peculiar fitness for the offices, to which they were respectively appointed, must preclude all objection on that head. Having already suggested my impression, that, in filling offices newly created, to which, on no principle whatever, any one could have a claim of right, Congress could not, under the Constitution, restrain the free selection of the President, from the whole body of his fellow-citizens, I shall only further remark, that if that impression is well founded, all objections to these appointments must cease. If the law imposed such restraint, it would, in that case, be void. But, according to my judgment, the law imposed none. An objection to the legality of those appointments must be founded, either on the principle that those officers were not comprised within the corps then in the service of the United States, that is, did not belong to the peace establishment, or that the power granted by the word "arrange," imposed on the President the necessity of placing in these new offices, persons of the same grade, only, from the old. It is believed, that neither objection is well founded. Colonel Towson belonged to one of the corps, then in the service of the United States, or, in other words, of the military peace establishment. By the act of 1815-16, the Pay Department, of which the Paymaster General was the chief, was made one of the branches of the staff, and he, and all those under him, were subjected to the rules and articles of war. The appointment, therefore, of him, and especially to a new office, was strictly conformable to law.

The only difference between the 5th section of the act of 1815, for reducing the army, and the 12th section of the act of 1821, for still further reducing it, by which the power to carry those laws into effect, was granted to the President, in each instance, consists in this, that by the former he was to cause the arrangement to be made of the officers, non-commissioned officers, musicians, and privates, of the several *corps of troops* then in the service of the U. States, whereas, in the latter, the term *troops* was omitted. It cannot be doubted, that that omission had an object, and that it was thereby intended to guard against misconstruction in so very material and important a circumstance, by authorizing the application of the act, unequivocally, to every *corps* of the staff, as well as of the line. With that word, a much wider range was given to the act of 1815, on the reduction which then took place, than under the last act. The omission of it, from the last act, together with all the sanctions which were given by Congress, to the construction of the law, in the reduction made under the former, could not fail to dispel all doubt as to the extent of the power granted by the last law, and of the principles which ought to guide, and on which it was thereby made the duty of the President to execute it. With respect to the other objection, that is, that officers of the same grade, only, ought to have been transferred to these new offices, it is equally unfounded. It is admitted, that officers may be taken from the old *corps*, and reduced, and arranged in the new, in inferior grades, as was done under the former reduction. This admission puts an end to the objection, in this case; for, if an officer may be reduced and arranged, from one *corps* to another, by an entire change of grade, requiring a new commission, and a new nomination to the Senate, I see no reason why an officer may not be advanced in like manner. In both instances, the grade, in the old *corps*, is alike disregarded. The transfer from it to the new, turns on the merit of the party; and, it is believed, that the claim in this instance is felt by all with peculiar sensibility. The claim of colonel Towson is the stronger, because the arrangement of him to the office to which he is now nominated, is not to one from which any officer has been removed, and to which any other officer may, in any view of the case, be supposed to have had a claim. As colonel Gadsden held the office of Inspector General, and, as such, was acknowledged by all to belong to the staff of the army, it is not perceived on what ground his appointment can be objected to.

If such a construction is to be given to the act of 1821, as to confine the transfer of officers from the old to the new establishment, to the *corps of troops*, that is to the line of the army, the whole staff of the army, in every branch, would not only be excluded from any appointment in the new establishment, but altogether disbanded from the service, it would follow, also, that all the officers of the staff, under the new arrangement, must be filled by officers belonging to the new establishment, after its organization and their arrangement in it. Other consequences, not less serious, would follow. If the right of the President to fill these original vacancies, by the selection of officers from



any branch of the whole military establishment, was denied, he would be compelled to place in them officers of the same grade, whose corps had been reduced, and they with them. The effect, therefore, of the law, as to those appointments, would be to legislate into office men who had been already legislated out of office, taking from the President all agency in their appointment. Such a construction would not only be subversive of the obvious principles of the constitution, but utterly inconsistent with the spirit of the law itself; since it would provide offices for a particular grade, and fix every member of that grade in those offices at a time when every other grade was reduced, and among them generals and other officers of the highest merit. It would also defeat every object of selection, since colonels of infantry would be placed at the head of regiments of artillery, a service in which they might have had no experience, and for which they might, in consequence, be unqualified.

Having omitted, in the message to Congress at the commencement of the session, to state the principles on which this law had been executed, and having imperfectly explained them in the message to the Senate of the 17th of January last, I deem it particularly incumbent on me, as well from a motive of respect to the Senate, as to place my conduct in the duty imposed on me by that act in a clear point of view, to make this communication at this time. The examples under the law of 1815, whereby officers were reduced and arranged from the old corps to the new, in inferior grades, fully justify all that has been done under the law of 1821. If the power to arrange, under the former law, authorized the removal of one officer from a particular station, and the location of another in it, reducing the latter from a higher to an inferior grade, with the advice and consent of the Senate, it surely justifies, under the latter law, the arrangement of these officers, with a like sanction, to offices of new creation, from which no one had been removed, and to which no one had a just claim. It is on the authority of these examples, supported by the construction which I gave to the law, that I have acted, in the discharge of this high trust. I am aware that many officers of great merit, having the strongest claims on their country, have been reduced, and others dismissed; but, under the law, that result was inevitable. It is believed that none have been retained, who had not, likewise, the strongest claims to the appointments which have been conferred on them. To discriminate between men of acknowledged merit, especially in a way to affect so sensibly and materially their feelings and interests, for many of whom I have personal consideration and regard, has been a most painful duty; yet, I am conscious that I have discharged it with the utmost impartiality. Had I opened the door to change, in any case, even where error might have been committed, against whom could I afterwards have closed it, and into what consequences might not such a proceeding have led? The same remarks are applicable to the subject, in its relation to the Senate, to whose calm and enlightened judgment, with these explanations, I again submit the nominations which have been rejected.

JAMES MONROE.

*Washington, April 12th, 1822.*

*To the Senate of the United States:*

I re-nominate Nathan Towson, to be colonel of the 2d regiment of Artillery.

James Gadsden, to be adjutant general of the army of the United States.

JAMES MONROE.

*Washington, April 12, 1822.*

The messages were severally read; and

On motion,

*Ordered*, That they be severally referred to the Committee on Military Affairs, to consider and report thereon; and that they be printed for the use of the Senate, under an injunction of secrecy.

On motion,

*Ordered*, That the message of the 21st January last, nominating to promotions and appointments in the army, be re-committed to the Committee on Military Affairs, further to consider and report thereon, and that it be reprinted for the use of the Senate, under an injunction of secrecy.

On motion,

*Ordered*, That the message of the 26th March, withdrawing certain nominations to appointments in the army, be referred to the Committee on Military Affairs, to consider and report thereon, and that it be printed for the use of the Senate, under an injunction of secrecy.

[Mr. Williams communicated to the Senate the following letter.]

*Copy of a Letter to the Hon. WILLIAM EUSTIS, Chairman Military Committee, House of Representatives.*

WAR DEPARTMENT, 29th January, 1822.

SIR: I have submitted to the President, for his direction, your letter of the 17th instant, in which you state, that the Committee on Military Affairs are of the opinion, that the appointment of Col. Gadsden to the office of adjutant general, when there were at the time of his appointment two adjutant generals in service; that the appointment of Colonel Towson, not at the time an officer in the line of the army, to be colonel of artillery; and the transfer of Lieutenant Col. Lindsay, of the 7th infantry, to fill a vacancy in the 4th artillery, occasioned by the resignation of Lieutenant Colonel Mitchell, subsequently to the arrangement of the army, established May 17th, 1821, and after the 1st of June, the time limited by law, for the organization of the army, are not conformable to the provisions of the law nor to the regulations of the army; and request me to communicate to them the grounds and authority on which the appointments and transfer before mentioned have been made: and I am directed by him to state to the committee, that, in making the appointments and transfer in question, he was governed by that construction of the laws and regulations in relation to the subject of inquiry, which ap-

peared to him conformable to their real intention, and to the principles established in reducing the army, under the act of the 3d of March, 1815, for fixing the peace establishment at the termination of the late war: the provisions of which act, in relation to the points in question, being similar to those in the act of the 2d March, 1821, under which the late reduction was made.

He also directs me to state to the committee, that he has submitted to the Senate the cases to which they have objected, as well as others of a similar character, growing out of the late reduction, by a nomination to them for their constitutional sanction.

The committee appear to be under a mistake as to the facts in relation to the appointment of Colonel Gadsden, as adjutant general. Instead of two adjutant generals being in service at the time he was appointed, (the 13th of August last,) as the committee suppose, there was no officer of that grade in the service at the time. Col. Gadsden, in the arrangement of the army under the act making the late reduction, was retained as inspector general, which office he held before the reduction, and the adjutant generals of the northern and southern divisions, (Colonels Butler and Jones,) to whom it is supposed the committee refer, had been arranged, the former to the 4th infantry provisionally, and the latter to his place in the line of artillery, as will appear by a reference to the register herewith transmitted. General Atkinson, who had been arranged to the office of adjutant general, declined accepting it, and Colonel Gadsden was appointed by the President to fill the vacancy, in conformity to the provisions of the 10th section of the act of the 24th of April, 1816, "for organizing the general staff," &c. which authorizes the President to appoint staff officers from the line of the army, or from citizens, without any limitation. But, admitting that the committee were correct in their statement, and that Col. Gadsden, at the time of the reduction, had been arranged to the place of adjutant general, there being two adjutant generals then in service, instead of being retained as inspector general, the principles established in the reduction of the army, under the act of the 3d of March, 1815, would have fully justified the arrangement. The provisions of the two acts for reducing the army are, in relation to this point, precisely the same. In the reduction under the act of 3d March, 1815, Colonel Hayne, inspector general at the time, was provisionally retained as adjutant general of the north division, there being, at that time, eight adjutant generals in service, which arrangement received the sanction of Congress, in the act already referred to, of the 24th April, 1816, the 10th section of which confirmed the provisional arrangement of the staff officers.

In relation to the transfer of Lieut. Col. Lindsay to the corps of artillery, after the 1st of June, the time limited by law for the re-organization, to which the committee object, as not being conformable to law and regulation, it is proper to observe, that it is fully supported by the precedent established in the reduction of the army, under the act of 1815. Under that act, the army register, by general orders, (see register for 1815, herewith transmitted, marked A.)

was kept open to fill vacancies of any grade, which might occur, from among the reduced officers, from the 17th of May, 1815, to the 17th of May, 1816. Under this order, eighteen transfers from and to various corps, and sixty appointments from disbanded officers, were made, which will appear by reference to the general order of the 17th of May, 1816, a copy of which is herewith transmitted (marked B). Under the late reduction, the register was kept open, for the purpose of transferring only, from the 1st of June to the 1st of January last, as will appear by reference to the register, and only two officers, Lieut. Col. Lindsay, and Lieut. Walker, were transferred, excepting such as were made on mutual application for that purpose. It may be said that a reduction so great as that which was made after the late war, justified the principle then adopted, but that there existed no necessity to apply it to the late reduction. The difference between the two cases is no doubt great, as is the difference between the extent to which the principle was carried in them; but, to an objection to the *power* of the President under the laws and regulations, which the committee is understood to make, it is believed that the consideration of greater or less expediency can have no weight.

Lieut. Colonel Lindsay, before the late reduction, was lieutenant colonel of artillery, in which corps he had served eight years; but, on the late reduction, he was arranged to the infantry. On the resignation of Lieutenant Colonel Mitchell, it was considered as an act of simple justice to transfer him back to his proper corps, from which, in the reduction, he had been removed, only from the necessity of the case. It was, however, not an act of justice to Lieutenant Colonel Lindsay only, but, more emphatically so to three other meritorious officers. In the late reduction, Lieutenant Colonel Taylor, and Major Woolley, on General Atkinson's being arranged as Colonel of the 6th infantry, would have been reduced, from necessity, as junior officers in their grades, to inferior grades, had not Lieutenant Colonel Lindsay been transferred to the artillery, which transfer, making a vacancy in the infantry of the grade which he held, restored the two former to the rank from which they had been reduced, and retained Captain Cobb in service by the arrangement. Such were the motives for the transfer, which were considered much stronger than those which opposed it. Had the transfer not been made, brevet Lieutenant Colonel Eustis would have been raised to a full Lieutenant Colonel, by promotion; brevet Major Wilson, to be major, brevet Captain Welch to be captain; and 2d Lieutenant Cooper, to be first lieutenant. As highly valuable as these officers are esteemed, with them it was a question of promotion, while, with the others, of equal merit, it was that of reduction; between which the President could not hesitate, believing he possessed the power. If the construction given to the act of 1815 should be supposed to be the one intended to be given to the act making the late reduction, and it is not perceived how a different supposition can be admitted, the wording of the two acts being similar, and the construction given to the former being well known, it would seem to admit of little doubt, that



the President was authorized to consider the military establishment, under the act making the late reduction, as not definitively closed at the time of issuing the general order of the 17th May, to which the committee refer, nor as being necessarily closed, even on the 1st June. The general orders designate, it is true, the officers to be retained, with their grades and corps, but the same orders announced, that, until the 1st January, the President, in conformity to the power exercised in the former reduction, did not consider the arrangement as to the corps to which the officers were attached, as definitive, reserving, until that time, the right of making transfers. In keeping open the definitive adjustment of the establishment until the time specified, the President was governed by a due regard to the good of the service, and to the just claims of the officers, by correcting, as far as it could be done with propriety, cases of great hardship, such as that of Lieutenant Colonel Lindsay, and the others connected with it.

It only remains to consider the case of Colonel Towson, to whose appointment in the corps of artillery it is objected by the committee, that he did not belong at the time to the line of the army. The 12th section of the act of the 2d of March last, to reduce the military establishment, authorizes the President to "arrange the officers, non-commissioned officers, artificers, musicians, and privates, of the several corps now in the service of the United States, in such manner as to form and complete out of the same the force authorized by this act." In considering the authority of the President under this section, it became a question with him whether it was the intention of Congress that each corps should be reduced and arranged by itself, that is, those officers belonging to the corps of artillery or infantry should be retained only in the artillery or infantry, as the case might be, in their proper grades, and so in relation to the several branches of the staff, or that a more liberal construction should be given, so that the officers of the several corps might be arranged to any corps in the same, or different and inferior grades, care being taken that no officer should be removed, without reason, from his corps or grade. In determining which of these constructions ought to prevail, reference was had to the construction adopted under the 5th section of the act of 1815, fixing the peace establishment, from which the section under consideration was obviously taken, being in almost the same words. It was believed to be a fair deduction that Congress, in adopting the same provisions in both, intended that the two sections should receive the same construction, and, consequently, as the 5th section of the act of 1815 had received the freest construction, (see table herewith transmitted, marked C,) the President determined that Congress did not intend, in the act making the late reduction, that, in arranging the officers to constitute the present establishment, he should be restrained to the particular corps and grade to which they belonged, but that it was intended that he should give the same construction which the former act had received. He was confirmed in the belief that such was the intention of Congress from the fact, that, in the particular instance in which the wording

of the two sections differ, that of the act making the late reduction is less limited, indicating on the part of Congress a disposition to enlarge rather than to restrain the power of the Executive; and from the manifest injury which would result from the opposite construction, both to the public and to the officers of the army. Were the officers of every corps and grade possessed of equal merit and claims on the public for length and importance of their service, but little inconvenience could result from adopting the most rigid construction; but, as that cannot be expected, it was obviously advantageous, both to the public service and the officers, that a more liberal construction should be adopted. Under a rigid construction, many cases of great hardship would have occurred. Not to notice many others, such a construction would have disbanded two general officers (Generals Macomb and Atkinson) of great merit, and having strong claims on the public, which, from the necessity of the case, could only be provided for in inferior grades and corps to which they did not belong, as general officers are not attached to any particular corps. Under the liberal construction adopted, and which was fully sanctioned by the precedent, growing out of the former reduction, Colonel Towson, the paymaster general at the time of the late reduction, was appointed by the President to fill the rank of colonel in one of the regiments of artillery created by the act reducing the army, and being consequently an original vacancy. The army regulation provides (see 4th article of the regulations) that such vacancies may be filled by selection, at the discretion of the President; and there is in the act for reducing the army no limitation on the power of the President in filling the original vacancies under the act, which would restrain him in his selection, either to the line or to the staff. The only limitation in this particular which can be inferred from the act, is, that the selection should not extend beyond the military establishment, which comprehends the pay department as a portion of the staff. Under these impressions, the President did not hesitate to appoint Colonel Towson to the command of one of the new regiments of artillery, it being a corps in which he had in the late war acquired great experience and reputation, both for himself and country.

I have the honor to be, &c.

J. C. CALHOUN.

THURSDAY, APRIL 25, 1822.

Mr. Williams, of Tennessee, from the Committee on Military Affairs, to whom was referred the army nominations, and the two messages of the President on that subject, reported as follows:

That they have carefully examined the reductions of the army, made in 1802 and 1815, for the purpose of discovering if there were precedents which would justify the course pursued in the reduction of 1821. The result of the examination is, that the three acts of Congress are substantially the same, but the practice under them

has been widely different. In 1802, Mr. Jefferson executed the law strictly. In 1815, Mr. Madison departed from the law, by retaining officers in a grade below the rank they formerly held in the army; and, in 1821, not only was the precedent of 1815 pursued, but principles were introduced unknown to our military code. The provisions of the law of the 2d March, 1821, were disregarded in many particulars. The committee have examined the argument in the message, which is intended to justify the transfer of colonel Lindsay from the infantry to the artillery, subsequent to the first of June, 1821, and have formed an opinion different from that entertained by the President. The transfer is attempted to be supported on the exception alleged to exist in the 75th article of the rules and regulations established for the government of the army, which article is in the following words: "The transfer of officers will only be made by the war department, in orders, on the mutual application of the parties, *except in extraordinary cases*. See 63d article of war. Nor shall an officer be transferred into a regiment to the prejudice of the rank of any officer thereof. When officers are transferred at their own request, the order for change of station will specify the fact." On referring to the 63d article, which is in the following words: "The functions of the engineers being generally confined to the most elevated branch of military science, they are not to assume, nor are they subject to be ordered on any duty beyond the line of their immediate profession, except by the special order of the President of the United States; but they are to receive every mark of respect to which their rank in the army may entitle them, respectively, and are liable to be *transferred*, at the discretion of the President, from one corps to another, regard being paid to rank." It will be seen that this article, relates exclusively to the *engineer corps*, and consequently there is no legal authority for the transfer of colonel Lindsay, from the infantry to the artillery. The 75th article, referred to by the President, determines the principle, and in fact the rule, by which transfers can be lawfully made. The article provides, "that the transfer of officers will only be made by the war department, in orders, on the application of the parties, *except in extraordinary cases*. See 63d article of war," &c. It is not pretended, in this case, that the parties applied for a transfer. But on the contrary, the transfer gave great displeasure, because it took away the rank and the right of promotion from all the officers under colonel Lindsay in the corps of artillery, and gave to the infantry officers a fictitious rank to which they were not entitled.

Independently of this view of the subject, which the committee consider conclusive, there is another ground which places this question beyond the possibility of doubt. During the last session of Congress, the book of regulations was printed, and each member furnished with a copy. By comparing the 75th article in this book with the same article in the book lately printed for the use of the army, it will be found that the exception relied upon by the President, is an *interpolation*, and is not, in the original, submitted to Congress when that

body was called on last session to enact these regulations into law. The President, however, submits to the Senate for confirmation only the names of the officers on the list accompanying the message. On examining this list, the name of colonel Lindsay is not to be found. It is, therefore, in the opinion of the committee, not competent for the Senate, at this time, to control this illegal transfer.

The committee, on examining the new register of the army find many irregularities, and beg leave to refer to one in the Inspector's Department. The 6th section of the act, passed the 2nd of March, 1821, to reduce and fix the military peace establishment, provides that there shall be two inspectors general, with the rank, pay, and emoluments, of colonels of cavalry. The terms of the act in relation to these two officers are precisely the same; but a construction has been given to the act very different as regards these two officers. One of them, Colonel Wool, is in service *without*, and the other, Colonel Archer, *with* lineal rank. This arrangement is calculated to produce great sensibility among the officers of the army, and to embarrass the service.

On the list accompanying the message of the 17th of January, Colonel Towson is nominated to the Senate in the following words: "Second regiment artillery, Nathan Towson, late captain light artillery, to be Colonel 1st June, 1821." This nomination shows, what is the fact, that Colonel Towson, some years ago, was a captain in the light artillery, which office he resigned before he was appointed paymaster general. It is usual both in the army and naval nominations to state the former rank of the officers, to enable the Senate to determine whether their promotions are regular and according to the principles of seniority. If this description of Colonel Towson's former rank in the army was given with this view, it is evident that the promotion is irregular, because it is to the prejudice of all the officers, under the grade of a colonel, who ranked this gentleman whilst he was an officer in the artillery. The President in his message does not rest the claims of Colonel Towson to the command of a regiment on the ground taken in the list of nominations, but further insists, that the pay department, being a part of the military establishment, within the meaning of the act of 2nd of March, 1821, "*constituted one of the corps of the army*," and it was competent for him, under the provisions of said act, to appoint Col. Towson to the command of one of the regiments of artillery; Colonel Towson having resigned the captaincy which he formerly held in the army, and accepted the office of paymaster general.

The message does not furnish the rule whereby he was translated from the pay department to the command of a regiment, in preference to his old rank of captain, or to a majority, or to the rank of Lieutenant Colonel. The message not having furnished a rule on this subject, the committee were compelled to look into the law and former usage; and they come to the conclusion, that the paymaster general could not legally be transferred from that situation to the command of a company, battalion, or regiment, and that he did not constitute



one of the *corps of the army*: that he was a salary officer under bond and security; and the duties required of him were those of the Quill, and not of the Sword. The 12th section of the act of 2nd March, 1821, is in the following words: "Sec. 12. And be it further enacted, That the President of the United States cause to be arranged, "the officers, non-commissioned officers, artificers, musicians, and "privates, of the several corps *now* in the service of the United "States, in such manner as to form and complete out of the *same* the "force authorized by this act, and cause the *supernumerary* officers, "non-commissioned officers, artificers, musicians, and privates, to "be discharged from the service of the United States." The question arises, on the construction of this section, whether "*the pay department constituted one of the corps of the army,*" out of which the President was required to arrange and complete the force retained by said act. The committee hold the negative of this proposition, and rely upon the law of the land and military usage, to sustain them in this position.

It is provided in the 6th section of the act of the 24th April, 1816, that all paymasters, commissaries, and storekeepers, shall be subject to the rules and articles of war, in the same manner *as commissioned officers*: Provided, also, that all officers of the pay and commissary departments be submitted to the Senate for their confirmation, in the same manner as the officers of the army.

Here are but two points wherein the three classes of officers, above enumerated, are likened unto *officers of the army*. But these apparent assimilations are not confined alone to these public agents. Officers of marines, when on shore, are subject to the "rules and articles of war;" and judges, foreign ministers, and most other officers under the federal government, are submitted to the Senate for confirmation. To be classed, therefore, with the officers of the army, so as to come within the obvious meaning of the above recited 12th section of the act of the 2d March, 1821, the Paymaster General should be clothed, by law, with other and more important military properties than the two above mentioned. But the President, in his message, insists, that the pay department is a part of the military establishment. This is admitted. Military establishment is a comprehensive term, and includes every one subject to martial law. By recurring, however, to the 12th section of the act before cited, the words "military establishment" are not to be found. The terms used are, "the several corps now in service," out of which he was to "*arrange*" the force retained by the act. Admitting the Paymaster General to be a staff officer, his duties are of a civil character, and may be classed with the Commissary of Purchases, the Surgeon General, chaplains, storekeepers, wagon masters, sutlers, &c. These officers have neither rank nor command in the army. They have no prescribed uniform; nor do they wear either sword or epaulettes. Their duties are peaceful. They are non-combatants. In civilized warfare, if taken prisoners, they would be liberated like other citizens; and the laws and usages of service distinctly mark

their civil character. Army corps signifies a body of forces; not civil, but warlike forces; such as have prescribed uniforms and epaulettes, wear swords, or carry arms, such as muskets, and bayonets, with which they meet and combat the enemy in the field. Major generals, brigadier generals, adjutant and inspector generals, and the like, properly speaking, constitute the staff of the army. They have command and "*assimilated rank*" in the army. They are men at arms and wear prescribed uniforms, swords, and epaulettes, and the laws and usages of service distinctly mark their warlike and military character. The argument in the message that the President had the whole range of the military establishment, out of which he could, at pleasure, select the commanders of regiments, if it prove any thing, proves too much. It has already been shown that this is a comprehensive term, and it includes not only paymasters, surgeons, chaplains, storekeepers, sutlers, &c. but, also, all retainers of the army who are subject to martial law. According to the usages of service, the President could, with the same military propriety, arrange any one of these civil characters to the command of regiments, as he could transfer Colonel Towson from the pay to the military department.

In the sixth paragraph of the third article of the army regulations, it is provided, that "No officer of the staff, not having lineal rank, or rank *assimilated* thereto, shall command any officer whatever having such rank, but, on the other hand, the former shall be subordinate to the latter, under the following restrictions: 1st, the Commissary General of purchases, the Surgeon General, the *Paymaster General*, and the Apothecary General, to general officers only," &c. Here a clear distinction is taken between officers of the army having rank, and staff officers having no rank: the latter, to wit, purchasing commissaries, the Surgeon, *Paymaster*, and Apothecary Generals, are prohibited from commanding even a second lieutenant.

The position taken by the committee, in behalf of the army, is applicable to the navy also. The duties of a purser in the navy are analogous to the duties of a paymaster in the army. The principle which would justify the appointment of a paymaster to command a regiment, would authorize the appointment of a purser to command one of our ships of the line, to the exclusion of the long list of gallant officers, who have, by their valor, acquired so much renown for the country.

In the 8th sec. of the 1st art. of the constitution of the United States, it is provided, that Congress shall have power "to make rules for the government and regulation of the land and naval forces." In virtue of this power, Congress have directed, both in the land and naval service, that promotion shall be according to *seniority*. This principle has heretofore been held sacred. The army and navy were created for national purposes. By adhering to the principle of promotion, which is coeval with their existence, they will retain their national character. The individuals who compose these arms of national defence, have rights secured by law; and when these rights

are violated it is their privilege to appeal to the tribunals of the country for redress, (as many officers have done on this occasion to the Senate,) as a part of the Executive council of the nation. A departure from this principle would have the most fatal effect. It would verify the adage, that one campaign to Washington was worth two upon the lines. A system of favoritism in promotion would supply the place of law and regulation. The army and navy, instead of retaining their *national* character, would become the creatures of the Executive. Men of honor, whose rights had been violated, would be driven from the service, and those only retained who would patiently submit to any indignity. An army and navy composed of such materials, in times less virtuous than the present, would be dangerous instruments in the hands of those who would have the power to wield them. The committee believe that both law and policy unite in resisting every attempt to introduce such doctrines in our service.

The great object of the act of the 2d of March, 1821, was to *reduce* and not to *increase* the military force of the country. But, with the view of improving the organization of the artillery, the battalions were converted into regiments, and four colonelcies were created. But it is denied that the office of adjutant general was created by that act, as will be hereafter shown. The question again recurs, whether these four offices were to be filled by *officers then in service*, or by citizens, or by non-combattant staff officers. The President insists that he had the right to fill those offices from the latter description of persons. The committee hold the negative of that proposition. Before the passage of the act of the 2d of March, 1821, there were eleven regiments in service, to wit: one of riflemen, one of ordnance, one of light artillery, and eight of infantry. By said act, eleven regiments were retained, to wit: four of artillery, and seven of infantry. By the third section of the act, the *corps of engineers* was retained as *then organized*. When it is remembered that before the passage of the act, there were *eleven* regiments, and the *same number* were retained by the act, it is a fair presumption that *all* the colonels, lieutenant colonels, and majors, were intended to be retained. This presumption is strengthened, when it is distinctly recollected that this exposition was given of the act, by the committee who reported it, when the bill was discussed in the Senate. By recurring to the 11th section of the act, this question rests no longer on presumption, but is made manifest by positive law. The 11th section is in the following words: "That the officers, non-commissioned officers, artificers, musicians, and privates, *retained* by this act, except those specially provided for, shall have the same rank, pay, and emoluments, as are provided in like cases by existing laws; and that the force authorized and *continued* in service under this act, shall be subject to the rules and articles of war." The 12th section of the act before referred to, directs that "the President *cause to be arranged* the officers, &c. of the *several corps now in service*, in such manner as to *form and complete out of the same*, the force" authorized

by the act. The word *arrange* signifies "to put in proper order for any purpose." The purpose was to *reduce* the army to the standard pointed out by the preceding sections of the act, and to put in proper order the officers, &c. "*retained*" by said act. The committee believe they cannot be mistaken in this conclusion; and that the term *arrange* does not mean, to *create*, and put out of order, as it has been interpreted in the late reduction of the army. The words of the act in relation to the four regiments of artillery are the same; but, a construction has been given to it widely different. It has been made to mean "*to put in order*," as regards the 1st and 3d, and to "*create and put out of order*," as relates to the 2d and 4th regiments. Colonel Porter, who takes rank from the 12th March, 1812, is "*arranged*" to the 1st regiment of artillery, and Colonel Armistead, who takes rank from the 12th November, 1818, is "*arranged*" to the 3d. But Colonels Towson and Fenwick are "*appointed*" to the 2d and 4th regts. taking rank from the 1st of June, 1821. The President's message of the 12th of April, 1822, when treating of the regiment of light Artillery, formerly commanded by Colonel Porter, says, "that regiment was reduced, and all its parts re-organized in another form, and with other duties; being incorporated into the four new regiments, the commander was manifestly displaced and incapable of taking the command of either of the new regiments, or any station in them, until he should be authorized to do so by a new appointment." The committee dissent from this proposition, and contend that the interpretation first given by the President, to the 12th section of the act, so far as relates to this officer, was the correct construction, and that he was authorized to "*arrange*" Col. Porter to the command of either of the regiments of artillery, as he did "*arrange*" him to the first, without a re-appointment or nomination to the Senate, and that Colonel Porter was in the legal discharge of his official duties, under the commission which he had, long before the reduction of the army. The 12th section of the act authorized the President, after arranging the officers, &c. out of the former, so as to complete, out of the same, the retained army, to cause the "*super-numerary*" officers to be discharged from the service of the United States. By the 13th section of the act, it is provided "that there shall be allowed and paid to each commissioned officer, discharged from the service of the United States, in *pursuance* of this act, three months' pay, in addition to the pay and emoluments to which he may be entitled by law, at the time of his discharge." The word "*super-numerary*" signifies above a stated number. The object of the act was reduction, and when the new standard was complete, by arranging from among the materials on hand, the residue, or "*super-numerary*" officers, were to be discharged, with three months gratuitous pay. To discharge an officer legally, and pay him three months additional pay, he must have been "*in service*," in the former army, and *no place* for him in the reduced army. He would then, and then only, be "*a super-numerary*," according to the provisions of the act, and then only could he be discharged in pursuance of the act. The



committee regret to say, that several officers of great merit, who would not suffer by a comparison with those retained, have been discharged with gratuitous pay, on the alleged ground that they were "*supernumeraries*," or, that there was no place provided for them under the law, when, in truth and in fact, to the places provided for *them* by law, others, not contemplated by the act, were appointed. The message assumes the ground, that Congress could "not under the constitution, restrain the free selection of the President, from the whole body of his fellow citizens, to appoint to these places." The constitution of the United States, provides, that "Congress shall have power to make rules for the government and regulation of the land and naval forces." Under this article of the constitution, it is competent for Congress to make such rules and regulations for the government of the army and navy, as they may think will promote the service. This power has been exercised from the foundation of our government, in relation to the army and navy. Congress have fixed the rule in *promotions* and *appointments*. Every promotion is a new appointment, and is submitted to the Senate for confirmation. In the several reductions of the army and navy, Congress have fixed the rules of reduction: and no Executive, heretofore, has denied this power in Congress, or hesitated to execute such rules as were prescribed.

The President "*approved*" and *signed* the act of the 2d March, 1821, and, *at that time*, made no declaration of an opinion that the law was unconstitutional, and thereby sanctioned its constitutionality. Having given his assent to this law, the committee believe he is, as well as all others, bound by it. The committee will not dispute the legal power of the President to discharge an officer from the land or naval service; but, in such case, the officer discharged would not be entitled to three months' additional pay, which has been paid to all the officers who have been put out of service in the late reduction. There is, therefore, no pretence for saying, as has been urged, that the President exercised his constitutional power in discharging several officers. He says himself, he acted "*in pursuance*" of the law. In the second section of the second article of the constitution of the United States, it is provided, "That the President shall have power, by and with the advice and consent of the Senate, to *appoint* all officers of the United States whose appointments are not therein *otherwise* provided for, and which shall be established by law." By the construction heretofore given to this article, the Senate had the same power, and the same range of discretion to withhold their "*advice*" and "*consent*," that the President had to *nominate*: and the Senate would abuse the trust confided to them, if they were to ratify nominations, when either policy or law required their rejection. In the message accompanying the "*re-nominations*" of Colonels Towson and Gadsden, it is urged, that "if an officer may be *reduced* and *arranged* from one corps to another by an entire change of grade, requiring a new commission and a nomination to the Senate, there is no reason why an officer may not be *advanced* in like manner;" and the example of 1815 is relied upon in support of this position. It is

true that, in the reduction of 1815, the law was departed from in the instance of retaining an officer in a grade below the rank he had before held in the army. A great proportion of the officers in 1815, were retained on this principle; and when their names were submitted to the Senate, *a considerable time after* the reduction had been made, that body, with much hesitation, lent a reluctant assent to the arrangement, without supposing that this departure would be set up as a justification for another still more dangerous to the rights and character of the army. The principle of *razeeing* having have been recognized in 1815, the Senate, under the authority of that precedent, in the reduction of 1821, have ratified the nominations of Generals Macomb and Atkinson, and Major Dallaba, officers who were *razeed*. The Senate having, by their decision in the reduction of 1821, gone as far as the precedents of 1815 would justify, the committee think it proper to pause and seriously to reflect, before they give their assent to the doctrines advanced in the message, whereby the President would be sustained in *advancing* second lieutenants to the head of our regiments, and midshipmen to the command of our ships of the line, to the exclusion of colonels and naval commanders who are in service under the law.

It is correctly stated in the message that the fifth section of the act of 1815, contains the words "*corps of troops*," and the twelfth section of the act of 1821, uses the term "*corps*," out of which the force retained was to be constituted. It is conceded that omission had an object. But it was not intended that that omission should give to the President a wider range, or place his discretion above the provisions of the law, but was designed alone to improve the phraseology of the section, by omitting a superfluous word, without affecting the obvious meaning of that section. If it were necessary further to prove that the pay department does not constitute one of the "*corps*" of the army out of which the army *retained* was to be composed, the committee would refer to the commission issued to Mr. Brent, late paymaster, and signed by Mr. Jefferson; and, also, to the fact, that this officer has heretofore been placed on the civil list in the different appropriation bills. These circumstances also distinctly mark his civil character.

If the committee should be mistaken in the correctness of the views before presented, and they feel confident they are not, there is a document among the proceedings of the board of general officers, which, independent of all other facts and arguments, proves, incontestibly, that the construction put by the committee on the act is the correct one, and that the proceedings of the board of general officers, charged with the reduction of the army, were not regulated either by the provisions of the law, or by any construction of it. The document is in the following words:

"The board of general officers, of which Major General Brown is president, being of opinion that Colonels Wadsworth, Bissell, King, and

*Smith, should not be retained, beg leave, respectfully, to recommend, that Brigadier General Atkinson be arranged to the office of Adjutant General, that General Parker be appointed to the office of Paymaster General, and that Colonels Towson and Bomford be appointed Colonels of artillery.*

“JACOB BROWN, *President.*”

“April 13, 1821.”

It is thus seen that the board of general officers, who were called in to aid in the execution of the law to reduce the army and to “arrange” each officer to his proper place, commenced that work by recommending to the President to put out four of the eleven colonels then in service. The board did not pretend that these officers were “supernumeraries,” or that it was necessary to discharge them as such. It is, therefore, manifest they substituted their own will and pleasure for the rule prescribed by law. It is in proof before the committee, that the original paper, containing this recommendation, was deposited in the Adjutant General’s Office for safe keeping; and, afterwards, at the request of General Brown, it was delivered to him, who immediately destroyed it.†

The committee have examined with great care the message, re-nominating Colonel Gadsden to be Adjutant General, and have looked in vain for an argument which could convince them that the decision lately made by the Senate was erroneous. It has been urged “that General Atkinson, who had been arranged to the office of Adjutant General, declined accepting it, and Colonel Gadsden was appointed by the President to fill the vacancy, in conformity to the provisions of the tenth section of the act of the 24th of April, 1816.”

If the provisions of this act were inconsistent with the provisions of the act of the 2d March, 1821, so much of the former act as is so inconsistent, is repealed by the last mentioned act, and, of course, the appointment is not supported by the authority relied on. But the committee are in possession of a copy of a letter from General Atkinson to General Brown, dated St. Louis, 6th April, 1821, in answer to one which had been written to him on that subject, in which General Atkinson *positively* declines accepting the office of Adjutant General. This letter was received by General Brown on the 27th of the same month, and *before* General Atkinson was arranged by the board to the office of Adjutant General. When it was known, *positively*, that General Atkinson would not accept this office, why was he arranged to it? This arrangement was nominal, and could not have the effect of evading the law, or creating a vacancy which did not before exist. And the committee are of opinion, that the tender of this office to General Atkinson, with a knowledge that he would not accept, did not produce a vacancy, and that, in deciding on the legality of Colonel Gadsden’s appointment, this arrangement of General Atkinson must be left out of view. The 6th section

of the act of the 2d March, 1821, is in the following words: "That there shall be one Adjutant General and two Inspectors General, with the rank, pay, and emoluments, of Colonels of cavalry." Before the passage of the act there was one Adjutant and Inspector General, two Inspectors General, and two Adjutants General. The object of the act was "*reduction*," and, with that view, the office of Adjutant and Inspector General was dispensed with; and, also, that of one Adjutant General, and the two offices of Inspector General, and one of Adjutant General, retained. This section having retained the two offices of Inspectors General; and the 11th section, before cited, having *retained* the incumbents, it was not supposed by any one, that either or both of them could be discharged as  *supernumeraries*  under the provisions of the act. By referring to the general order of May 17th, 1821, it will be seen that those who were charged with the reduction of the army were of this opinion. The law left these officers where it found them, and the general order announced that they remained in the offices they before held. But a very different construction was given to that part of the same section, which relates to the Adjutant General. There were two Adjutants General in service, Colonels Butler and Jones, and the committee insist, by a fair construction of the act, one of them was "*retained*," and the President was authorized only to elect which of the two should be "*discharged*" as a " *supernumerary* ."

It is contended, in the message, that this was an "*original vacancy*," and it was competent for the President to discharge both Butler and Jones, and fill this office by *appointing* any other person. As the object of the act was to reduce the army, and not create offices, it is fair to presume that excision was intended to be applied only where there was an excess, either in number or organization. This rule was applied to that part of the same section relating to the Inspectors General. As it regards them, there was no excess, and all agree that they were retained by the law. Colonels Butler and Jones had the rank, pay, and emoluments of Colonels of cavalry; the precise attributes of the Adjutant General secured to the army by the act. But it is said that the Adjutant General of a *division* was deemed not to be co-ordinate with the Adjutant General of the *army*. On the subject of their duties, nothing has been prescribed. The laws are silent. Their rank, pay, and emoluments, are the same; and there is a perfect coincidence in all their endowments. The fifth section of the act provides that there shall be one Major General, and two Brigadier Generals. There were then in service two Major Generals, and four Brigadier Generals, making an excess of one half. According to the principle applied to the Adjutant General, the commission of a Major General commanding a *division* is inferior to the same commission when the same person commands the whole *army*. But the Major General of the late northern *division* is now Major General of the *army* of the United States, in virtue of his former commission. The two cases are precisely similar. There were two Major Generals, making an ex-



cess of one; it cannot be inferred that they were *both* to be disbanded, and some citizen or non-combattant staff officer to be *appointed* to command the army. Perfectly analagous is the case of the two Adjutants General; but the rule applied to them by the Board has been different. The Major General of the late northern division now commands the whole army: but the two Adjutants General are *both* and *singular* "*supernumerary officers*," and as "*Adjutants General*" have both been discharged from the service of the United States. The committee cannot believe that this is a fair construction of the act; particularly when the board of General officers, charged with the reduction of the army, have adopted a different rule in their *own case*, which is precisely parallel to the case of the Adjutant General retained; and more especially when it is distinctly remembered that the construction now given to the sixth section of the act, by the committee, is the same which it received when the bill was discussed on its passage in the Senate. It has been further insisted in support of the "*appointment*" of Colonel Gadsden, that it was fully justified by the retention of Colonel Hayne, in 1815. It is true that in 1815, at the close of the war, there were eight Adjutants General in service; and it is equally true that the law of 1815, "*reducing and fixing the army*," disbanded the whole of them, not retaining even one; but the law of 1821, says "*there shall be one Adjutant General*," with all the attributes of the two officers of that rank then in service.

In the absence of law, therefore, President Madison, on his responsibility, chose "*provisionally*" to *add* to the army what the law had omitted, to wit: two Adjutants General. This being the case, neither of the eight Adjutants General had a right to demand of the Executive places of his own temporary creation. The Executive could select any one he chose to act as Adjutants General, as he had exercised the power of creating those offices. Colonel Hayne could not have been "*retained*" as Inspector General, because that office was abolished by law. For what purpose then can it be said that Colonel Hayne, Inspector at the time, was "*retained*" as Adjutant General? It certainly cannot be to elucidate the subject. It is evident, therefore, that the appointment of Colonel Gadsden is in no particular parallel with the appointment of Colonel Hayne. The latter *avowedly* was in the absence of all law on that subject, and the former *professedly* in pursuance of law. By tracing the progress of the principles for which the committee now contend, through the vicissitudes of the Revolutionary war, it will be seen that the basis of our rules for the government of the army was established as early as the 30th of June, 1775, and by these rules "*sutlers, retainers, and other persons of the army*," (not being soldiers,) were made subject to the articles of war.

By a resolution of the 10th January, 1778, reducing the number of regiments on the continental establishment, it was directed, in order to avoid just cause of complaint, as to rank, those charged with the reduction were confined as nearly as possible *to the military line*.

By a resolution of the 27th May, 1778, it was ordained that aids-de-camp, brigade majors, and quartermasters, *heretofore* appointed from the line, were to hold their present rank, and be admitted again to the same, but were not to *command any one who commanded them while in the line.*

On the 3d of October, 1780, among other things, it was directed for the regiments to be *raised*; the commander in chief was to direct the officers of regiments to meet and agree upon the officers for them from among those who inclined to serve; and, when it could not be done by agreement, it was to be determined by *seniority.*

On the 22d of April, 1782, it had been found necessary to reduce the lieutenants of each regiment to ten, and it was provided that the reduction should be made from the supernumerary *junior* lieutenants in each regiment.

On the 7th August, 1782, it became necessary further to arrange the army, according to the resolutions of the 3d and 21st October, 1780, and for this purpose, it was provided that the *junior* regiments should be drafted to fill the *senior* regiments, and the commander in chief should direct the officers of the line of each state to meet and agree who should command the troops so arranged; and when they could not agree, *the junior officers of each grade were to retire.* Under this resolution it became doubtful whether a senior officer could retire with honor, if he would; and, on the 19th November, it was, by another resolution, provided that the *senior officers of each grade* should, under the act of the 7th August, be retained, and that the redundant *junior officers* of the several grades should retire; but the commander in chief might permit a *senior* to retire. The committee appeal with veneration to this period of our military history for the correctness of the doctrines they now contend for, and cannot but mark the contrast between the principles then held sacred, and those which were introduced in the late reduction of the army.

In the 2d section of the 2d article of the constitution of the United States, it is provided, that "the President shall have power to fill up all vacancies that may *happen* during the recess of the Senate, by granting commissions which shall expire at the end of their next session." If the offices to which Colonels Towson and Gadsden are nominated were original vacancies created by the act of the 2d March, 1821, the committee contend that they were not filled agreeable to the provisions of the constitution. The words "all vacancies that may *happen* during the recess of the Senate," evidently means vacancies occurring from death, resignation, promotion, or removal; the word *happen* must have reference to some casualty not provided for by law. Original vacancies must mean offices created by law, and not before filled. Admitting, then, that the offices to which Colonels Towson and Gadsden are nominated, were original vacancies created by the law to reduce the army, the Senate was *then in session*, and these nominations were not made during that session. From whence then does the President derive his power to fill those offices in the recess of the Senate? Certainly not from the constitution, because the

Senate was in session when the law passed, and the appointments were made after the adjournment of Congress; and he had no power to make them in the recess, because the vacancies did not *happen* in the recess of the Senate. The committee believe this is the fair construction of the constitution, and the one heretofore observed. For many instances have occurred where offices have been created by law, and special power was given to the President to fill those offices in the recess of the Senate; and no instance has before occurred, within the knowledge of the committee, where the President has felt himself authorized to fill such vacancies without special authority by law. Hence the committee conclude, from the President's own shewing, that the appointments of Colonels Towson and Gadsden were not authorized either by the constitution or law.

The committee take great pleasure in admitting the merits of these gentlemen, but believe that this consideration cannot fairly enter into the construction of the law and constitution. But they do not admit that their claims on the country are superior to those who have been put out of their proper places in the army, in order that these gentlemen might occupy them. And, whilst the committee forbear entering into a comparative view of the merits of all the officers illegally discharged, and those put into their places, they must be permitted to say that General Bissel entered the service, as a soldier, about the year 1790, and for his distinguished bravery at St. Clair's defeat, was promoted from a sergeant to an ensign, and has risen through every rank to that of a Brigadier General in the late war; and that, in every situation, he has been distinguished for his bravery and correct military conduct. Colonel Smith has lately been recommended in the warmest terms by General Brown for the important office of Governor of Florida, and has been actually nominated by the President to the Senate for the office of judge of that territory.

The committee are of opinion, if those officers merited dismissal in the judgment of the board, the reasons for their discharge should have been stated, and the necessity of the act justified; but that it cannot be correct to attribute it to the operation of the law of 1821, when the provisions of that act had no effect on the measure.

When the committee add their acknowledgment to the assertion of the merits of Colonels Towson and Gadsden, it is proper they should repel the inference that the rejection of their nominations by the Senate evinces a disregard of their merits, or an indifference to their just reward. Whether a suitable provision ought to be made for Col. Towson is not now the question. That was done by the act. By it he was left in the office of Paymaster General, a place of distinction and superior emolument. Colonel Gadsden, too, was left by the act in the office of Inspector General, in which he might have been continued, and the necessity thereby avoided of reducing Colonel Jones, who had been twice brevetted for distinguished gallantry during the late war, to the rank of captain, which he held at its commencement.

The committee regret that there exists a difference of opinion between the President and Senate, and must express an unfeigned regret that, in the discharge of a paramount duty, they should have induced a suspicion of an arraignment of his motives, or a want of due consideration on their part, of these nominations when first presented. The questions at issue are not of a personal or political character, in which the merits of the officers are at all concerned, but are of law and constitution.

On such questions the President and Senate might differ, as do the highest judicial tribunals of our country, without a suspicion of unkind feelings. With that disposition to harmony and good feelings, which does, and is to be hoped always will, exist on the part of the Senate towards the Chief Magistrate of the nation, the committee have carefully examined the message of the 12th April, 1822, and have not been able to discover any views in that message which were not presented, and duly considered, during the deliberations, which occupied the serious attention of the Senate for more than two months before these nominations were rejected. However delicate the measure of sending back to the Senate nominations rejected by them; or, however liable to abuse the practice in other times might become, the constitution does not prohibit the President from doing so, but, whilst it imposes no restriction on his discretion in this particular, the right belongs to the Senate to confirm or reject them. If a difference is thus produced, the Senate have no means of avoiding it, and it rests alone with the President to create or continue such collisions at his discretion. Under the foregoing views, the committee believe it to be their duty to submit to the Senate the following resolution:

*Resolved*, That the Senate do not advise and consent to the "re-nominations" of Colonels Towson and Gadsden.

Mr. Williams of Tennessee, communicated to the Senate the following deposition:

*Deposition of General Parker.*

Having been summoned before the military committee of the Senate of the United States, and having been required by them to state, in a deposition, the substance of my oral communication, which was made in answer to their inquiries relative to certain copies which were laid before the Secretary of War, with my letter of the 15th instant, and in relation to the reduction of the army, conformably to general orders of the 17th of May, 1821, I, Daniel Parker, depose and state, that, soon after the passage of the act to reduce and fix the military peace establishment, dated the 2d of March, 1821, I understood the Secretary of War to say, that the Executive had determined to offer me the reduced rank, pay, and emoluments, appertaining to the office of Adjutant General, in which office the same duties before performed by me, as Adjutant and Inspector General, would be



required, as far as should be found consistent with the new organization; that the same clerks which had been authorized by law, for the Adjutant and Inspector General's Office, would be continued; and that the general officers to be retained would be called to this city to aid and advise in relation to some parts of the reduction. The arrangement, as it related to myself, was communicated by me, to at least one of the Generals, before their board met in April. During the session of the board, I was often ordered, by the Secretary of War, to make communications to them, and I was sometimes called on by the board for official information, between the 12th of April and the 14th of May, 1821. Their proceedings and views were not communicated to me, further than was necessary to enable me to answer inquiries. Two of the members of the board, in their individual and private capacity, as I understood, expressed to me a wish that I would take the office of Paymaster General, and that such consent on my part would promote the service, as it would facilitate the desirable arrangement of making General Atkinson Adjutant General, and Colonel Towson a colonel of artillery. I had understood General Atkinson was offered the 6th regiment, before the board met, and I stated, as well to those gentlemen, as to the Secretary of War, that several years since, when Atkinson was only colonel, he had said to me, he would not exchange his regiment for the office of Adjutant and Inspector General, with the rank, pay, and emoluments of Brigadier General, and that, of course, I was convinced he would not now take it with reduced rank, &c. When the papers were put into my hands by the Secretary of War, directing me to make out and publish the new army list, as soon as practicable, I perceived that there were several contingent conditions of office, which seemed necessary to be published as explanations of the register, and those, as well as the list, were copied. On a careful reading of those recommendations, I had some doubt whether all, and what part, should be published, and was going to the Secretary of War for his further directions, in relation to them, when I was stopped at the room of the board of officers, which was then occupied by Generals Brown and Gaines; General Scott, I believe, had left the city; General Brown asked for those papers, all of which, I believe, was then in my hand, and commenced destroying them. I requested his forbearance, and stated that I received them from the Secretary of War, to whom I was then carrying them. He said they had a substitute, which would be given me. I immediately reported the fact to the Secretary of War, and left the further explanation for Gen. Brown. I afterwards received, in lieu of them, on the same day, the recommendation which was signed by General Brown, and is published with the general orders of the 17th of May, 1821. The copies of three separate papers, dated April 13th, May 8th, and May 11th, 1821, and signed by General Brown, were first taken, under the impression that they must necessarily be published, in explanation of the new army list. When the originals were withdrawn from me, and the one dated May 14th, substituted, I retained the copies, be-

cause they related to my own official situation, in connection with others. A transcript was taken and furnished to the Secretary of War, on a recent application, to know if I had any papers in relation to the late reduction of the army.

If all the papers referred to were not destroyed, as I am sure part of them were by General Brown, they may perhaps be among the records and files of the late Adjutant and Inspector General's Office, of which General Brown relieved me, on the 1st of June, by order of the Secretary of War, dated May 31st, 1821.

The foregoing contains, briefly, all that I understood to be deemed material in my answer to the inquiries of the Committee of Senate on Military Affairs, and is, to the best of my recollection and belief, a true statement.

DANIEL PARKER.

Sworn and subscribed, this 23d day of April, 1822, before me.

ENOCH REYNOLDS, J. P.

[Received by the Committee after their Report.]

GEORGE WASHINGTON, PRESIDENT OF THE UNITED STATES  
OF AMERICA.

*To all who shall see these presents, greeting:*

Know ye, That, reposing special trust and confidence in the integrity, diligence, and ability of Caleb Swan, of Massachusetts, I have nominated, and, by and with the advice and consent of the Senate, do appoint him paymaster of the troops of the United States, to reside with the army; and do authorize and empower him to execute and fulfil the duties of that office according to law; and to have and to hold the said office, with all the rights and emoluments thereunto legally appertaining, unto him, the said Caleb Swan, during the pleasure of the President of the United States, for the time being.

In testimony whereof I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed. Given under my hand, at the city of Philadelphia, this

[L. s.] ninth day of May, in the year of our Lord one thousand seven hundred and ninety-two, and of the Independence of the United States of America the sixteenth.

GEORGE WASHINGTON.

By the President:

THOMAS JEFFERSON.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

*To all whom shall see these presents, greeting:*

Know ye, that, reposing special trust and confidence in the patriotism, fidelity, and abilities, of Robert Brent, I have nominated, and, by and with the advice and consent of the Senate, do appoint him paymaster of the army of the United States, in conformity to an act of

Congress, passed the sixteenth day of March, one thousand eight hundred and two, entitled "An act fixing the military peace establishment of the United States." This commission to continue in force during the pleasure of the President of the United States.

Given under my hand, at Washington, this first day of March, in the year of our Lord one thousand eight hundred and nine, and in the thirty-third year of the independence of the United States.

TH: JEFFERSON.

By command of the President of the United States of America:

JOHN SMITH, *Chief Clerk,*  
*Acting Secretary of War.*

[Received by the Committee after their report.]

THE PRESIDENT OF THE UNITED STATES OF AMERICA,

*To all who shall see these presents, Greeting:*

Know ye, that, reposing special trust and confidence in the patriotism, valor, fidelity, and abilities, of Nathan Towson, I have nominated, and, by and with the advice and consent of the Senate, do appoint him Paymaster General of the army in the service of the United States; to rank as such from the twenty-eighth day of August, eighteen hundred and nineteen. He is, therefore, carefully and diligently to discharge the duty of Paymaster General, by doing and performing all manner of things thereunto belonging. And I do strictly charge and require all officers and soldiers under his command to be obedient to his orders as Paymaster General. And he is to observe and follow such orders and directions, from time to time, as he shall receive from me, or the future President of the United States of America, or the General, or other superior officers set over him, according to the rules and discipline of war. This commission to continue in force during the pleasure of the President of the United States, for the time being.

Given under my hand, at the city of Washington, this eighteenth day of March, in the year of our Lord one thousand eight hundred and twenty, and in the forty-fourth year of the Independence of the United States.

JAMES MONROE.

By the President:

J. C. CALHOUN,  
*Secretary of War.*

ST. LOUIS, 6th April, 1821.

SIR: The letter of Colonel Wool, containing your propositions for me to accept the situation of Adjutant General, under the new organization of the army, has been received. I have to offer you my thanks for the complimentary terms in which I am mentioned, but I must decline acceding to the proposals. I cannot go to Washington with degraded rank. The only situation, below my present grade, that I would accept of, has been offered to me by the

Secretary of War; a regiment with brevet rank of Brigadier. With this I can wear out my time on a remote frontier till better times offer, when, if I merit it, I shall be rewarded. Accept my best wishes for your health and prosperity, whilst, with respect and esteem

I am, my dear sir,

Your most obedient servant.

H. ATKINSON,  
*Brigadier General.*

Major General BROWN,  
*United States army, city of New York.*

HEAD QUARTERS, WASHINGTON,  
13th April, 1821.

MY DEAR GENERAL: I am here, as you will perceive by the papers, for the purpose of aiding in the selection and arrangement of the officers to be retained in service, under the act of the 2d of March, reducing the military peace establishment. You will have seen, also, that Generals Gaines and Scott have been retained as Brigadiers. General Macomb will, if agreeable to himself, be placed at the head of the corps of engineers, as Colonel, with his brevet rank; and it is my anxious wish that you should be arranged to the office of Adjutant General, with your brevet rank. As I am to be stationed here as general in chief of the army, it is to me a subject of deep interest to have an officer as chief of my staff, in whom I can place, and the army and country repose the most implicit confidence. You are that officer; and if, as I believe it will, the selection should fall upon you, as a friend who has rendered you some service, permit me to claim your acceptance of this situation in my military family. It is very possible that I may be the greatest gainer by this arrangement, but it will be a part of my duty to see that you are not a loser. Admitting that your command upon the Missouri is more agreeable to your views, I should hope that you would be willing to make some sacrifice to meet my wishes, and the just expectations of the army.

It may be proper for me to say in this place, that it appears to be a well digested and settled opinion here, that the Brigadiers are to be so arranged, that one of them will command upon the Atlantic and the other upon the Mississippi, or western frontier, including the Gulf of Mexico; and should this arrangement be made, St. Louis, or some place in that section of the country, would be the head quarters of the General commanding in the west.

I cannot close this letter without saying, that it is my confirmed opinion, that you can be more useful to yourself and the army, by accepting a situation that will place you under the immediate eye of the government, than in any other, which you can hold under the present law, and that it is your duty to accept the office of Adjutant General, if it be assigned to you.

Your friend,

JACOB BROWN.

Brigadier General H. ATKINSON.



ST. LOUIS, *June 15th*, 1821.

DEAR SIR: I have had the honor to receive your favor of the 27th April. The same reasons that I offered in my letter of the 4th May, prevents me from accepting of the situation of Adjutant General of the army.

I regret that it is not in my power, consistently with my own interest, to oblige you in your repeated requests to take a place in your staff.

With very great respect and esteem, I have the honor, &c.

H. ATKINSON,  
*Brig. Gen. U. S. army.*

Major General BROWN,  
*United States army, Washington City.*

MONDAY, APRIL 29, 1822.

Mr. Williams, of Tennessee, laid on the table the following papers, which were read:

[Received by the Military Committee on the day of its date.]

DEPARTMENT OF WAR, *January 31*, 1822.

DEAR SIR: Since I had the conversation with you, I have compared the 75th article, as printed in the book of regulations, with the same article in the document which was printed by the order of Congress, at the last session; and it has resulted in an opinion, that the words in the Book of Regulations, "except in extraordinary cases, see 63d Article of War," ought not to constitute a part of the text, but are mere matter of reference, introduced by the indexing, which was done after the adoption of the regulations by Congress; and that, consequently, the whole of those words ought to have been placed in a parenthesis, the omission of which, by the printer, has caused the apparent variation.

With great respect, I am, &c.

J. C. CALHOUN.

HON. J. WILLIAMS.

[The following, with its enclosures, rec'd. by committee four days after their report.]

WAR DEPARTMENT, *April 29*, 1822.

SIR: I herewith enclose a deposition of Brt. Major General Scott, accompanied by a letter from the Hon. Alexander Smyth to him, which satisfactorily explains the difference between the army regulations as printed by the order of the War Department, under the superintendence of General Scott, and the manuscript which was laid before the House of Representatives, and printed by its order previously to the adoption of the regulations by Congress. By reference to the deposition and letter, it will be seen, that the regulations

printed by the order of this Department accord with those adopted by Congress, though they do not, in any particular, with the volume printed by the order of the House for its consideration, previously to the adoption of the regulations by Congress; and that, in particular, article 75, in relation to transfers, is correctly printed, as adopted.

I also enclose a letter from General Scott, in relation to the arrangement of General Atkinson to the place of Adjutant General, under the act making the late reduction of the army, in which he states his reason for believing, at the time, that General Atkinson would accept of that office in preference to the command of a regiment, which had been offered him by the President, through this Department.

Although my own impression (which was communicated to the Board) was, that General Atkinson would probably prefer the command of the 6th regiment to the office of Adjutant General; yet, I did not believe it to be certain; particularly as I knew that the Major General, to whom the Adjutant was immediately attached, took a deep interest in his acceptance of that office, and would use his personal influence with him to its full extent, to induce him to accept.

Very respectfully, your ob't. serv't.

J. C. CALHOUN.

HON. J. WILLIAMS,

*Chairman of the Committee on Military Affairs.*

SIR: I accidentally omitted to enclose the letter of General Scott to which I referred in mine of this morning. I now enclose it.

Very respectfully, I am, &c.

J. C. CALHOUN.

COL. WILLIAMS.

WASHINGTON CITY, 28th April, 1822.

SIR: I proceed to state what I recollect concerning the corrections made by you, in the System of Field Service and Police, adopted by Congress at their last session, for the army of the United States.

As Chairman of the Committee of Military Affairs in the House of Representatives, I received two printed copies, corrected by you, of the System. The first, I received directly from you, as I believe; the second, through the War Department, or the office of the Adjutant and Inspector General, which I understood to have your final corrections. This last was the copy which I intended that the Regulations should be printed from; and I am very confident that, for that purpose, I deposited it with the Clerk of the House of Representatives. It is also impressed on my mind, that I wrote either to the Secretary of War, or yourself, referring to that copy as the one from which the Regulations ought to be printed.

It is not in my power to say in what the copy which I suppose to have been deposited with the Clerk, differed from the copies which were printed for the use of the members of Congress. There were

corrections of errors of the press, verbal alterations, and some additions, in the first copy; and, I believe, still more of the latter in the second copy, which was that deposited with Mr. Dougherty.

Very respectfully,

ALEXANDER SMYTH.

Major General Scott,  
*Washington City.*

WASHINGTON, *April 27th, 1822.*

In compliance with your request, I will state, to the best of my memory and belief, the material circumstances known to me, relative to the recommendation of brevet Brigadier General Atkinson, for the office of adjutant general, made by the board of general officers, of which I was a member, assembled for the purpose of assisting in the late reduction of the army.

It is not deemed material for me to say what were my own wishes or opinion on that recommendation, though I am free to declare that I entertain for General Atkinson the greatest respect as an officer, and hold him in the closest esteem as a man.

On taking a view of the whole army list, and the general effect of the impending reduction, it very early occurred to the board, (I mean, at least, a majority thereof, either including or excluding myself individually,) that it would be desirable, in order to save the greatest number of valuable officers for the service, generally, to retain Gen. Atkinson as adjutant general. Before, however, any decision was taken on the question, I understood from General Brown that he had written to General Atkinson, intimating what would probably be done by the board relative to the latter; and, afterwards, when the arrangement had been definitively made in that case, and in the others of importance connected therewith, I learnt from General Brown that he had received a letter from General Atkinson, expressing a preference for his then situation, and a desire to be continued in it, with the reduced rank of colonel of the 6th infantry, and the brevet of brigadier of the army. Now there was an official letter of General Atkinson, addressed to the War Department, before the board at that time, in which it was distinctly seen what was his meaning as to *his then situation*, (for he was already advised, at the time of writing the letter, of his reduction to the rank of colonel,) viz. the command of a department, with, of course, the pay and emoluments of his brevet rank. But, understanding from you that he could not be continued in that command; that is, that you would be obliged, under the law, to have but two great departments, for myself and General Gaines, the board concluded that when General Atkinson should become acquainted with that decision, (of which he was then ignorant) he would prefer the office of Adjutant General to the immediate and sole command of the 6th regiment; particularly, as all the difficulties in making the establishment at the Council Bluffs had been already overcome, and there was no longer room for activity or enterprize in that quarter. I feel myself at liberty to say, that this was my

own opinion, and appeared to be that of the other members of the board, down to the period of my leaving Washington to attend to other duties. I, however, never saw Gen. Atkinson's letter to Gen. Brown, nor do I know that it was shown to either yourself or Gen. Gaines. I am confident it was not laid before the board. There were other considerations which contributed to the persuasion last expressed above; such as Gen. Brown's declared intention to write a second time to urge Gen. A. to accept; to inform him of the important contingencies which would depend on his decision, &c. &c. I was, at the time in question, not unacquainted with the opinion entertained by my friend Gen. Parker on this subject, and the reasons on which it was founded; but, nevertheless, confidently expected a different result.

I have the honor to be, sir,

Very respectfully,

Your obedient serv't.

WINFIELD SCOTT.

To the Hon. J. C. CALHOUN,

*Secretary of War.*

*Deposition of Major General Scott.*

The deponent saith, he was, sometime in March, 1821, employed by the War Department, to superintend, at Philadelphia, the printing of the book entitled "General Regulations for the Army;" that he, accordingly, carefully examined the *proof sheets* as they successively came from the press. That the articles of the book which had then been recently approved by Congress, were *reprinted* with the most perfect good faith. That no alteration was, *after* the 2nd of March, 1821, made in either of those particular articles, except in some very few instances, wherein a word was substituted for another, merely with a view to grammatical accuracy, without changing a principle; and, excepting also, some slight changes in article 38, ("organization of departments,") such as striking out "major general of the division;" striking out "assistant" before the words "inspector general," &c. which changes were, in the opinion of the editor and compiler, (this deponent,) rendered necessary by the very act that approved the article; the act giving to the army, in those particulars, a *new* organization.

It remains for the deponent to explain *other variations* between the articles of the book first printed at Washington, by order of the House of Representatives, and the same articles reprinted at Philadelphia. The first printing was early in January, 1821; and the book was not sanctioned till the 2d of March following. Very early in this interval, the deponent received several copies from the press of the public printer. On reading over one of them at Philadelphia, he discovered, besides *typographical* errors, (of which there were many,) that some of the articles of the book did not perfectly harmonize with others. That certain principles laid down, required a greater developement



for practical purposes; and feeling much anxiety, in his capacity of compiler, for the literary and professional merits of the work, he immediately employed himself in correcting those errors and defects, which were more readily perceived in the *printed* shape the articles had then assumed. Having corrected, with *red ink*, two of the printed copies, so as to render them exact duplicates, this deponent retained one in his own possession, and sent the other through the War Department (some time in February, certainly many weeks before the 2d March, 1821,) with a request that it might be laid before the Military Committee of the House, and accepted as the copy to be approved. This was accordingly done, as the deponent is again advised by the chairman of that committee, who is still a member of that House, and the deponent avers, that the duplicate retained by him, was the copy from which the articles approved by Congress were reprinted, as above stated.

In respect to article 75, ("Transfers") one of those altered or recast, in February, as he verily believes, and transmitted as above, the deponent solemnly avers, that he received from no person whatever, any suggestion to make an alteration therein; that its present *verbal* shape was given to it, on his own mere motion, without a view to any particular case then foreseen; that, in his humble opinion, the principles embraced in the article are professionally sound, right, and proper; that the words "except in extraordinary cases," inserted by him, were borrowed from the article on *promotions*, (see article 4, paragraph 1, which regulation is at least as old, in our service, as 1813) where the same words will be found; giving to the Executive, in an analogous case, a *greater* power than he can exercise under the article on *transfers*, even as it at present stands; that the reference in the last mentioned article, to be found in these words—"see 63d article of war," was merely *editorial*, and not intended to make part of the text; but simply to assist the reader, (as in numerous other places in the book) to find kindred legislation on the same subject.

The custom of printers in cutting up *copy*, into leaves, it is presumed, is well understood. These detached leaves are sent by the printer, from time to time, and in parcels, with *proof-sheets* of the new impression, for the correction of the latter, by the superintendent of the press, who, in the instance in question, was the deponent; the proof-sheets being verified are then returned to the printer with the original copy. The deponent has recently caused a search to be made for the original copy printed from, in this case; but has only found one or two detached leaves, among his own papers, probably left by accident, and nothing among the printers' papers. By him, after the new book was out of the press, those leaves were considered as mere waste paper, as is believed to be usual in such cases. The leaves found by the deponent, contain no part of article 75, or any other that was altered between the first and second impression.

WINFIELD SCOTT.

Sworn and subscribed before me, one of the justices of the peace for Washington county, in the District of Columbia, this 29th day of April, 1822.

T. H. GILLISS.

The Senate proceeded to consider the message of the 12th April, nominating Nathan Towson and James Gadsden to military appointments, together with the report of the Military Committee thereupon.

On the question "Will the Senate advise and consent to the appointment of Nathan Towson to be Colonel of the second regiment of artillery?"

It was determined in the negative, { Yeas, . . . . . 17,  
Nays, . . . . . 25.

On motion,

The yeas and nays being desired by one-fifth of the Senators present.

Those who voted in the affirmative, are

Mr. Barbour,	Mr. Holmes, <i>of Miss.</i>	Mr. Parrott,
Brown, <i>of Lou.</i>	Johnson, <i>of Ken.</i>	Rodney,
Brown, <i>of Ohio,</i>	Johnson, <i>of Lou.</i>	Southard,
Eaton,	King, <i>of Alab.</i>	Stokes,
Edwards,	Knight,	Talbot,
Findlay,	Lanman,	

Those who voted in the negative, are

Mr. Barton,	Mr. Macon,	Mr. Taylor,
Benton,	Morril,	Thomas,
Chandler,	Noble,	Van Buren,
Dickerson,	Palmer,	Van Dyke,
Gaillard,	Pleasants,	Walker,
Holmes, of <i>Maine</i> ,	Ruggles,	Ware,
King, of <i>N. Y.</i>	Seymour,	Williams, of <i>Miss.</i>
Lloyd,	Smith,	Williams, of <i>Ten.</i>
Lowrie,		

On the question "Will the Senate advise and consent to the appointment of James Gadsden to be Adjutant General?"

It was determined in the negative,  $\left\{ \begin{array}{l} \text{Yeas, . . . . . 17,} \\ \text{Nays, . . . . . 25.} \end{array} \right.$

On motion.

The yeas and nays being desired by one fifth of the Senators present.

Those who voted in the affirmative, are

Mr. Barbour,	Mr. Holmes, <i>of Miss.</i>	Mr. Parrott,
Brown, <i>of Lou.</i>	Johnson, <i>of Ken.</i>	Rodney,
Brown, <i>of Ohio,</i>	Johnson, <i>of Lou.</i>	Southard,
Eaton,	King, <i>of Alab.</i>	Stokes,
Edwards,	Knight,	Williams, <i>of Miss.</i>
Findlay,	Lanman,	

Those who voted in the negative, are  
 Mr. Barton, Mr. Macon,  
 Benton, Morril,  
 Chandler, Noble,  
 Dickerson, Palmer,  
 Gaillard, Pleasants,  
 Holmes, of *Maine*, Ruggles,  
 King, of *N. Y.* Seymour,  
 Lloyd, Smith,  
 Lowrie,

Mr. Talbot,  
 Taylor,  
 Thomas,  
 Van Buren,  
 Van Dyke,  
 Walker,  
 Ware,  
 Williams, of *Ten.*

So it was

*Resolved*, That the Senate do *not* advise and consent to the appointments of Nathan Towson and James Gadsden.

TUESDAY, APRIL 30, 1822.

Mr. Williams, of Tennessee, communicated the following paper, which was read:

*April 30th, 1822.*

I certify that I was one of the Committee on Military Affairs, during the last session of Congress, and punctually attended each meeting of the committee, and frequently acted as chairman, in the absence of Gen. A. Smyth, who declined attending the committee, after it was determined by them to reduce the army. At an early period of the session, the regulations for the government of the army, compiled by Gen. Scott, were referred to said committee. The House of Representatives had them printed. I further certify that no other, or corrected copy, was submitted to the examination, or received the approbation, of the committee. I am confirmed in this opinion from the fact, that Gen. Smyth did not attend at any meeting of the committee after the bill was reported to reduce and fix the military peace establishment of the United States, until that bill had passed the House, and was returned by the Senate with amendments. This bill was referred to the Committee on Military Affairs, and when under examination, General Smyth attended. The particular subject of their consideration was, whether a major general and two brigadier generals, with their aids, should be retained in service. If the book of regulations was mentioned, I have not the least recollection of it, and my belief is, it was not; I am sure no corrected copy of the work was.

JOHN COCKE.

*Washington, April 30, 1822.*

We, the subscribers, were members of the Military Committee in the winter of 1821, and usually attended the meetings of said committee, and agree that the foregoing statement of facts by General Cocke is correct, according to our best recollection and belief.

JOSHUA CUSHMAN,  
 JOHN RUSS.

*Erratum.*—In a part of the impression, in Mr. Calhoun's letter, page 44, line 2d, for "in any particular," read *every* particular.

